

Present:
Mr. Justice Obaidul Hassan
And
Mr. Justice S M Kuddus Zaman

**CRIMINAL MISCELLANEOUS SUO-
MOTU RULE NO.11921 OF 2003**

IN THE MATTER OF:

The State

-Versus-

Md. Firoz Alam and others

.....Contemnor-opposite parties.

Ms. Rona Naharin (Annee), DAG with Mr. Md. Jashim Uddin, AAG, & Mr. Md. Shafquat Hussain, AAG For the State

Mr. Md. Faisal Hossain Khan, Advocate with **Mr. Moin Uddin**, Advocate

..... For the contemnor-opposite party No.1

Mr. AM Amin Uddin, Senior advocate with Mr. Moin Uddin, Advocate

.....For the contemnor-opposite parties No.2 & 3

Heard on 05.12.2018, 09.12.2018 & 09.01.2019
Judgment on 13.02.2019

Obaidul Hassan, J.

This Suo-Motu Rule was issued on the following terms:

Let a Suo-Motu Rule be issued calling upon the following persons namely-

1. Md. Firoz Alam, son of late Abdul Latif Talukder, now posted as District and Sessions Judge, Feni, District-Feni;

2. Yar Ahmed, son of late Faiz Ahmed, now posted as Nazir at District Judgeship, Feni, District-Feni and;

3. Altaf Hossain, son of Belayet Hossain, now posted as Nayeb Nazir at the District Judgeship, Feni, District-Feni;

to show cause by 12.11.2003 as to why they should not be committed for contempt of Court and punished accordingly.

The relevant fact of the case for disposal of the Rule in short is that his Lordship Mr. Syed Amirul Islam arrived at Feni town, Feni on 22.10.2003 at 2:00 pm by train, Mohanagar Provati. After getting down from the train his Lordship found that there was none from the District Judgeship of Feni to receive him at the Railway Station. There was, of course, an officer of the G.R.P and the Feni Station Master. His Lordship was surprised to see that no one came from the District Judgeship of Feni. On query the Station Master told his Lordship that on receipt of the itinerary from this Court, he informed the Judges Court about his Lordship's programme. Besides,

the tour programme was communicated to the learned District Judge, Feni, by this Court's letter No.11601-G, dated 20.10.2003. It has been ascertained by his Lordship from the office of this Division that the said letter was received by the District Judge's Office on 21.10.2003 and the letter was duly shown to the District Judge, Feni on that very day by the Administrative Officer(AO) of Feni Judgeship. The Administrative Officer was on leave for two days from 22.10.2003 and the Nazir was in his charge. The Nazir and Nayeb Nazir were present in the office on 22.10.2003 and 23.10.2003. After the dispatch of the itinerary his Lordship became slightly indisposed and as such decided to return to Dhaka on 23.10.2003, instead of 24.10.2003 as was the original programme. Therefore, after alighting from the train his Lordship brought it to the notice of the Station Master that he will send someone from the District Judgeship to him to sort out the issue with the H.O.R.

His Lordship arrived at his place of stay at about 2:20 pm and immediately phoned the District Judge in his chamber. Someone who described himself as the Stenographer of the District Judge answered the phone and his Lordship, after disclosing his identity, enquired of the Stenographer about the District Judge. The stenographer replied that the learned District Judge was in the Ejlash and busy in recording depositions of witnesses. His Lordship then asked the stenographer to tell the District Judge to call back his Lordship at his place of stay as he needed assistance with the matter of reservation of seats on the train for 23.10.2003. The phone number was also given to the stenographer and he assured his Lordship that he would definitely tell the District Judge to call back his Lordship. After waiting for 45 minutes his Lordship again phoned the office of the Administrative Officer at about 3 pm when someone picked up the phone and told his Lordship that AO was on leave and he did not know who was in charge of the

Administrative Office on that day. Confronted with such a situation his Lordship again telephoned the chamber of the District Judge. The phone was picked up by the Stenographer once again and his Lordship was informed that the District Judge was still in the Ejlash, recording depositions of witnesses and reassured his Lordship that as soon as the District Judge would get down from the Ejlash, the stenographer would tell, the District Judge, to call his Lordship. His Lordship waited till 4:30 pm expecting a call from the District Judge but to no effect whereupon his Lordship again telephoned the office of the AO when one 'Kalam' informed his Lordship that the Nazir was absent and Nayeb Nazir had gone upstairs to the Chamber of the District Judge with some files. His Lordship then immediately telephoned the Chamber of District Judge, but nobody answered. This created a suspicion in the mind of his Lordship that the District Judge and his staff were deliberately avoiding his Lordship, in collusion with each other, on false pretense.

To be sure his Lordship then sent his son, who was part of his entourage, to the Judge's Court. He went to the office of the AO. There he found one Kalam, who described himself as a staff of the office. His Lordship's son enquired of Kalam who was in charge of AO then said Kalam expressed his ignorance. Then his Lordship's son again asked where the Nayeb Nazir was and Kalam informed him that Nayeb Nazir had gone to the Chamber of the District Judge with some urgent files and at the request of his Lordship's son, Kalam went to the Chamber of the District Judge to tell the Nayeb Nazir that his Lordship's son is waiting in the office of AO and that he wished to see him. After about 15 minutes 'Kalam' came and told his Lordship's son that the Nayeb Nazir is busy showing some files to the District Judge and that after finishing he would come down to his Lordship's son and requested his Lordship's son to wait until then. Kalam also told his Lordship's son that he also told the District Judge that his Lordship's son is waiting to see the

Nayeb Nazir in connection with the booking of the return ticket. His Lordship's son in good faith waited for about 45 minutes and again asked Kalam to go to the Chamber of the District Judge to see if Nayeb Nazir is free. Coming down from the Chamber of the District Judge, 'Kalam' told that he did not find anyone there and both the District Judge and the Nayeb Nazir had left the office in the meantime. Meanwhile his Lordship was eagerly waiting and expecting a call from the District Judge as he had been informed about his Lordship's visit at Feni. However, no one cared to call back his Lordship nor did anyone from the District Judgeship visit his Lordship. Thereafter his Lordship's son returned to his Lordship and narrated his experience in the office of Judgeship. His Lordship thought that not only the District Judge, but his staffs were determined not to visit his Lordships during his stay at Feni. Finding no other alternative his Lordship had to send his son in the evening to the Railway Station to arrange the booking. The Station Master told him that

it would not be possible for him to confirm the booking until 11:00 am. On 23.10.2003 his Lordship's son again went to the Railway Station and after much difficulty arranged the booking without the help or assistance from the District Judgeship.

It is to be mentioned that in response to the letter No.11601-G dated 20.10.2003 the Deputy Commissioner, Feni arranged a transport with flag stand and also arranged police protection, but the District Judge, Feni, ignored his duties to his Lordship.

In the Rule issuing order his Lordship further observed that it was a binding duty of the District Judge, Feni, Md. Firoz Alam, to see his Lordship during his stay at Feni, either in the evening of 22.10.2003 or in the morning of 23.10.2003 as it was communicated to him that his Lordship will leave Feni in the afternoon on 23.10.2003. His Lordship also observed in the said order that he was badly in need of assistance and help from the Feni Judgeship as the Thana Nirbahi Officer (TNO), Feni

Sadar at whose residence his Lordship was staying was not at Feni at the relevant time as the TNO was on official duty in Dhaka. His Lordship also mentioned that a Judge of the Supreme Court of Bangladesh always carries his office with him and deserves due respect and courtesy from all concerned.

His Lordship also observed that it is obvious and apparent that the District Judge Md. Firoz Alam deliberately refused to see his Lordship at Feni during his stay. He also, by exerting his official power, prevented the staffs of the Judgeship from seeing his Lordship at Feni. His Lordship also observed that by the aforesaid conducts, acts and omissions the District Judge and other officials of Feni Judgeship defied the authority of this Court and maligned his Lordship in the eyes of the public. His Lordship also observed that the District Judge and the staff, to demonstrate their haughty and mighty attitude, having perpetrated the aforesaid contemptuous

acts and did not care even to make themselves available at his Lordship's place of stay to explain their actions.

Record shows that on the day of issuance of the instant Rule, the contemnors were asked to appear in person before this Court on 12.11.2003 at 10:30 am without fail. On 12.11.2003 the contemnor No.1, Md. Firoz Alam appeared before the Court presided over by Mr. Justice Syed Amirul Islam and tendered unconditional apology and prayed for mercy and also undertook to submit a written unconditional apology on Monday next i.e. on 17.11.2003 and two other contemnor-opposite parties No.2 and 3 also appeared before the Court and tendered unconditional apology and prayed for mercy and they also undertook to file written unconditional apology on Monday next i.e. on 17.11.2003. His Lordship on 12.11.2003 ordered as follows:

“Since all the contemnors-opposite parties have tendered unconditional and unqualified apology today and want to file written unconditional apology on 17.11.2003, the prayer is allowed.”

His Lordship further ordered that “let the matter be posted in the list on 17.11.2003 for filing apology in writing and hearing. All the contemnor-opposite parties are directed to remain present personally in Court at 10:30 am on 17.11.2003 positively.”

It appears from the record that on 17.11.2003 one Mr. Mvi Wahidullah, the learned advocate of this Court at 12:30 pm appeared before the Bench of Hon’ble Justice Syed Amirul Islam and mentioned the matter and referred to a news item published in some national dailies and prayed for two days’ time to submit the certified copy of the stay order passed by the Appellate Division staying the order dated 12.11.2003 passed by his Lordship Mr. Justice Syed Amirul Islam. Mr. Wahidullah appeared and made the aforesaid submission without filing any power. When the matter was brought to his attention Mr. Wahidullah prayed for time to mention the matter at 2 pm, but at 2 pm neither did he attend the Court nor file

any power on behalf of the contemnor-opposite parties. He did not even make any verbal prayer.

His Lordship Mr. Justice Syed Amirul Islam was kind enough to stay all further proceedings of the instant Suo-Motu Rule from his own after seeing the news items published in the daily newspapers.

It appears from the application filed by the contemnor-opposite parties, praying for unconditional apology, that after passing the order by Mr. Justice Syed Amirul Islam on 12.11.2003 the contemnor-opposite parties preferred Criminal Appeals being No.69-70 of 2003 before the Hon'ble Appellate Division and the Hon'ble Judge-in-Chamber of the Appellate Division was pleased to stay the order dated 12.11.2003 passed by the High Court Division in the instant Suo-Motu Rule. Thereafter, on 24.01.2011 the Criminal Appeal was heard in part fixing 30th January, 2011 for further hearing and on 31st January, 2011 the said criminal appeal was heard by the Appellate Division and the learned advocate on

record did not want to press the appeal and accordingly, the said criminal appeal was dismissed under the following findings and direction:

“Since the proceeding is still remain unresolved by the High Court Division let the matter be heard and disposed of by the Bench presided over by Mohammad Imman Ali, J. after giving due notice to the contemners.”

It is to be mentioned here that Mr. Justice Syed Amirul Islam laid down his robe on 13.01.2007. Unfortunately he could not know the result of the case during his tenure. However, this matter could not be heard by his Lordship Mr. Justice Mohammad Imman Ali. The record shows that on 27.02.2011 this matter was again sent to the Bench presided over by Mr. Justice Md. Anwarul Hoque to hear and dispose of, but the matter could not be heard by that Bench. Thereafter, on 24.04.2013 the same was sent to the Bench presided over by Madam Justice Zinat Ara. On 20.11.2013 their

Lordships adjourned the matter for two weeks and on 25.01.2017 the matter appeared in the daily cause list for hearing. Then on 12.04.2017 at the instance of the learned Deputy Attorney General the matter was adjourned for a week and also on 07.05.2017 the matter was again adjourned for a week. Thereafter, on 02.07.2017 the matter was again adjourned for a further period of four weeks by their Lordships Ms. Justice Zinat Ara and Mr. Justice Kazi Md. Ejarul Haque Akondo. Subsequently, on 05.11.2018 the Hon'ble Chief Justice of Bangladesh sent the matter to this Bench for hearing and disposal.

After receiving the record, on 07.11.2018 by an order we asked Registrar General, Supreme Court of Bangladesh and the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Law and Justice Division, Dhaka to let this Court know about the whereabouts of the contemnor-opposite parties by 15.11.2018 without fail and the matter was posted in the daily cause list on 18.11.2018 for hearing. Thereafter, the Office of the

Registrar General, Supreme Court of Bangladesh supplied the information about the contemnor-opposite parties to this Court and the matter was taken up for hearing on 18.11.2018. Then on 05.12.2018 and 09.12.2018 the matter was heard in part as the learned Deputy Attorney General made her submission. Since no one appeared on behalf of the contemnor-opposite parties, we fixed the matter on 17.12.2018 for delivery of judgment, but the delivery of judgment was deferred to 02.01.2018 as the Court was preoccupied on that date. Thereafter, on 02.01.2018 for the first time the learned advocate Mr. Moin Uddin appeared on behalf of the contemnor-opposite parties and sought some time for submitting application for unconditional apology on behalf of the contemnor-opposite parties and on that date this Court withdrew the matter from the column of the judgment and fixed the same on 09.01.2019 for further hearing as a part heard matter. On 09.01.2019 the contemnor-opposite parties by filing applications prayed for unconditional

apology and mercy and after hearing the same, the matter was kept for judgment in CAV.

Today we have taken up the matter for delivery of judgment. At the very outset let us see (a) whether the contemnor-opposite parties were diligent in responding to the show cause notice issued by the High Court Division. (b) Whether the apology they have tendered before us is at all the expression of remorse for their deeds and (c) for their conduct whether they were repentant at all.

We have already discussed in what terms the Suo-Motu contempt Rule was issued. Though by an order dated 12.11.2003 the contemnors were asked to appear before the High Court Division on the 17th November, 2003 and to file a written apology. The contemnor opposite parties moved before the Hon'ble Judge in-Chamber of the Appellate Division against the order dated 12.11.2003 passed by the High Court Division. His Lordship Mr. Justice Syed J.R. Mudassir Hossain, the

Hon'ble Judge in-Chamber (at the time) was pleased to stay the operation of the order dated 12.11.2003 passed by the High Court Division in Criminal Miscellaneous Suo-Motu Rule No.11921 of 2003. On 17.11.2003 Mr. Mvi Wahidullah an Advocate of this Court appearing before the High Court Division on behalf of the contemnor-opposite parties informed the Court that his Lordship's order dated 12.11.2003 has already been stayed by the Appellate Division, however, Mr. Mvi Wahidullah did not file any Vokatnama. When it was brought to the notice of Mr. Mvi Wahidullah he took time till 2 pm to file Vokatnama on behalf of the contemnor-opposite parties. At 2 pm neither Mr. Mvi Wahidullah nor anyone of the contemnor-opposite parties appeared before the High Court Division. Since Mr. Wahidullah informed the Court that the order passed by the High Court Division on 12.11.2003 has been stayed by the Appellate Division referring some news items published in the daily newspapers, his Lordship in the High Court Division

stayed the entire proceedings of the instant case so far as it relates to the contemnor-opposite party No.1. It is to be mentioned here that Mr. Mvi Wahidullah sought for two days time to submit the certified copy of the stay order granted by the Appellate Division, but he or the contemnors never returned to the Court with the certified copies of the order passed by the Appellate Division staying the operation of the order dated 12.11.2003 passed by the High Court Division. The conduct of Mr. Mvi Wahidullah no doubt was unbecoming of a lawyer. Being an officer of this Court he had shown disrespect to the High Court Division of the Supreme Court of Bangladesh which was also highly contemptuous. We are of the view that Mr. Mvi Wahidullah can be brought to book for his unbecoming behaviour which tantamounts to a misconduct for a lawyer. However, since his Lordship Mr. Justice Syed Amirul Islam did not issue any Rule upon Mr. Mvi Wahidullah, at this stage we restrained ourselves from proceeding against him.

However, after a long lapse of more than 7(seven) years on 24.1.2011 two Criminal Appeals No.69-70 of 2003 were partly heard by the Appellate Division fixing a date on 30.01.2011. On 31.01.2011 the said Criminal Appeals No.69-70 of 2011 were dismissed by the Appellate Division directing the High Court Division to hear the matter and to dispose of the same by the Bench presided over by Mr. Justice Mohammad Imman Ali. It will come to benefit all of us if we go through the full texts of the order passed by the Appellate Division in disposing the Criminal Appeal No.69 of 2003.

In disposing the above numbered appeal their Lordships in the Appellate Division observed as follows:

“It appears that the appeal is misconceived since the proceeding of contempt could not be disposed of by the High Court Division, because of the order of stay passed by this Division. However, on the earlier occasion Mr. T.H.Khan, half heartedly, submitted that even asking the contemner to appear before the Court is a mode of punishment, as such, this appeal was filed.

We are unable to accept this submission of the learned Counsel. The High Court Division under Article 108 of the Constitution may call upon any person to show cause in person as to why the proceeding of contempt should not be drawn up against him. Mere directing a person to appear in Court in response to a notice to show cause, is not a punishment. The whole purpose is to allow him an opportunity to show any cause as to why the proceedings of contempt need not be initiated.

Under such circumstances, we are of the view that the appeal is misconceived and the whole proceeding is sub-judice before the High Court Division.

Under the circumstances, the appeal is dismissed, however without any order as to costs.

Since the proceeding is still remain unresolved by the High Court Division, let the matter be heard and disposed of by the Bench presided over by Mohammad Imman Ali, J., after giving due notice to the contemner."

Though by the above order the matter was sent to the Bench presided over by his Lordship Mr. Justice Muhammad Imman Ali, ultimately his Lordship Mr.

Muhammad Imman Ali and other Hon'ble Judges of the High Court Division could not hear the matter till 05.07.2017. Record shows even on two occasions the learned Deputy Attorney General and the learned Assistant Attorney General took adjournment. We failed to understand as to why in a contempt matter the Office of the Attorney General took adjournment. It is the duty of the Office of the Attorney General to come to the aid of the Supreme Court not to protect the contemnors, particularly when a sitting Judge of the High Court Division of the Supreme Court of Bangladesh himself felt insulted that the Sessions Judge, Feni did not meet him in-spite being informed that his Lordship required assistance of the Sessions Judge, Feni for getting a reservation for a Dhaka bound train. In such a situation it is the duty of the Attorney General's Office to protect the prestige and dignity of this Court and it's Judges. It is evident from the record that since 31.01.2011 when the matter appeared in the daily cause list in two different

Benches presided over by Mr. Justice Anowarul Huq and Madam Justice Zinat Ara the contemnor-opposite parties did not file any reply against the show cause notice. For the first time on 26.12.2018 the contemnor-opposite parties filed an application tendering unconditional apology before this Bench. From the above conduct it is presumed that the contemnor-opposite parties were not at all sincere with their reply to the show cause notice issued by the High Court Division and their application for tendering an apology is not a proper and sincere apology sought out of repentance.

From the observations of the Hon'ble Judges of the Appellate Division it has become clear to us that the contemnor-opposite parties left no stone unturned to convince the Appellate Division that the contemnors did not commit any offence which can be termed as contempt of Court. Even today the contemnor-opposite parties did not say anything as to why they could not meet the Hon'ble Justice Mr. Syed Amirul Islam at his Lordship's

place of stay at Feni. In the applications for tendering apology they merely said that they are respectful to the Court and they did not have any intention to show any disrespect. These words do not diminish their guilt. Rather not giving any reason for not seeing the visiting Judge (Mr. Justice Syed Amirul Islam) at Feni is a kind of admission of fact that they did so intentionally; which is nothing, but a highly contemptuous act.

We also observed that the contemnor-opposite party No.1 tried to justify his non appearance before the High Court Division in paragraph No.3 of his application, saying that he (the contemnor No.1) was shocked and nervous as the news items were published in the daily newspapers namely the Daily Inqilab, Daily Dinkal and the Daily Ittefuq. But the shock sustained by his Lordship Mr. Justice Syed Amirnul Islam mattered very little to the contemnor-opposite parties. From the application we do not find any expression of sincere apology. We are of the

view that this apology has come from the pen of the contemnor-opposite parties, not from their hearts.

The long standing practice in this country is that whenever a Judge of any Division of the Supreme Court visits any district town, the District Judgeship makes arrangement for his Lordship's reception and looks after his Lordship during his stay, but in the case of his Lordship Mr. Justice Syed Amirul Islam there has been a sudden and surprise departure from that practice. The aforesaid acts and omissions are manifestation of the obstinate, arrogant and insolent attitude of the District Judge, Feni. The aforesaid conducts, acts and omissions amount to grossest form of contempt and thereby the said officials have shown disrespect to this Court and his Lordship and attempted to undermine the dignity, authority and prestige of this Court.

By the aforesaid conducts and omissions they have undermined the authority, dignity, prestige and the sanctity of this august seat of justice, which is one of the

three organs of the Republic. This sort of insolence and arrogance on the part of the sub-ordinate judicial officer/staff cannot and should not be overlooked as these are not only undisciplined acts, but are also contemptuous.

As per Article 109 of the Constitution of the People's Republic of Bangladesh, the High Court Division shall have superintendence and control over all courts and tribunals subordinate to it. As per Article 116 of the Constitution, the control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court.

From the above constitutional provisions it is clear that the control over the judiciary lies with the High Court Division of the Supreme Court. The provision of Article 116 of the Constitution is being exercised by a

General Administration (GA) committee of the Supreme Court consisting of 3/4 Judges of the High Court Division headed by the Hon'ble Chief Justice. This committee primarily deals with the posting, promotion and granting of leave of the judges of the subordinate judiciary. Ultimately, the proposal of the GA committee has to be placed before the full Court and the full Court after much discussion takes decisions. From the above constitutional provision and the practice of the Supreme Court it is obvious that the Supreme Court Judges are the controlling authority of the Judges in the subordinate judiciary.

The contemnor No.1, the then District and Sessions Judge, Feni defying the order of his Lordship Mr. Justice Syed Amirul Islam did not meet him at Feni. Furthermore, since 12.11.2003 to 26.12.2018 he did not file any explanation for not going to the place of stay of his Lordship at Feni to meet him and also did not file any application for tendering apology before this Court till

26.12.2018, which tantamounts to an act of insubordination as well as contempt of Court. If this situation happened in the case of Ministers or High Officials of the government it may be termed as a case of insubordination. Since as per section 25 of the Code of Criminal Procedure the Judges of the Supreme Court are the Justice of peace for whole country, they are full time Judge for whole of the country and wherever they go and ask any subordinate judicial officer to do any lawful work, it always carries the weight of a judicial order. The contemnor opposite party No.1 committed a gross contempt wilfully defying the order given by Mr. Justice Syed Amirul Islam at Feni on 22.10.2003 asking him (District Judge) to see him.

Above act or conduct and deliberate inaction on part of the contemner in paying due attention to the Hon'ble Judge of the Supreme Court during his stay at Feni were indeed gravely disrespectful to a Supreme Court Judge. It was not at all compatible with the

established practice and convention. Such act and deliberate inaction indisputably engendered his conscious disrespectfulness to a Supreme Court Judge and also maligns public perception towards the highest judicial forum of the country.

It is saddening to note that the contemnor No.1 being a District Judge did not care to pay due attention to the visit of a Supreme Court Judge. We condemn his conduct and conscious inaction that in other words, tended to disgrace the sanctity of the Supreme Court, an organ of the State.

We have already discussed above how and when the contemnors filed application for tendering apology. The chronology of the events show that the belated apology was submitted by the contemnors only when they failed to convince the Appellate Division on 31.01.2011. Thus, the apology of the contemnors has not come from their heart, but it has come from their pen and

no doubt a product of afterthought which cannot be accepted at all.

It is to be noted that whenever any Judge visits any place within the country or the embassies of the country in abroad the office of the Judge goes with him. Meaning thereby a Supreme Court Judge is a Judge for whole time for whole of the country. Thus, whenever any Supreme Court Judge goes to any District whether on an official tour or private tour the concerned District Judgeship is usually kept informed by the office of the Registrar General of the Supreme Court of Bangladesh about his Lordship's tour programme. The District and Sessions Judge is usually asked to make the tour program of the concerned Judge comfortable and smooth in coordination with the Deputy Commissioner (DC) of the respective District. The Police Supers are also directed to ensure the security of the Judge on tour.

To provide adequate security, the Police Super of the respective District takes measure. The security of the

visiting judges has been ensured by issuing various circulars from the concerned Ministry to the District level officers and other officials concerned.

From the memo No.VIP-..../95(Raj-4), 223 dated 07.08.2001 it appears that the Deputy Secretary (Political), Ministry of Home Affairs gave their opinion in respect of providing house guards in the houses of the Supreme Court Judges (Both Division) during their visit to the Districts and other places within the peripheries of the county which runs as follows:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
স্বরাষ্ট্র মন্ত্রণালয়
রাজনৈতিক শাখা-গ।

স্মারকঃ ভিআইপি-.../৯৫ (রাজ-৪), ২২৩

তাং-৭/৮/০১ ইং।

বিষয়ঃ সুপ্রীম কোর্টের বিচারপতি মহোদয়গণের দেশের অভ্যন্তরে সরকারী ও বেসরকারী ভ্রমনকালীন নিরাপত্তা ও আনুসাংগিক সুবিধাদি নিশ্চিত করণ প্রসংগে।

সূত্রঃ মন্ত্রিপরিষদ বিভাগের স্মারক নং- মপবি/জেপ্রবি/২(৯৯)/৯৮-১৫৯ তাং ১৯/৯/২০০০ ইং।

সূত্রে উল্লেখিত স্মারকের প্রেক্ষিতে বর্ণিত বিষয়ে আদিষ্ট হয়ে জানানো যাচ্ছে যে, আপীল বিভাগের বিচারপতিগণের জেলায় সফর/অবস্থানকালে ১ জন হাবিলদার/নায়ক ও ৩ জন কনষ্টেবল হাউজগার্ড এবং ১ জন পোষাকধারী কনষ্টেবল মোতায়েন করা যেতে পারে এবং হাইকোর্ট বিভাগের বিচারপতিগণের ক্ষেত্রে ১ জন

হাবিলদার/নায়ক ও ৩ জন কনষ্টেবল হাউজগার্ড হিসাবে মোতায়ন করা যেতে পারে এবং সেই মোতাবেক নীতিমালা/সার্কুলার জারী করা যেতে পারে।

(মোঃ মতিউর রহমান)
উপ-সচিব (রাজ)

Subsequently, on 06.02.2002 vide memo No.মপবি/জেলা-৪/২(৯৯)৯৮/৫৩২ referring the memo dated 07.08.2001 Cabinet Division issued a circular to provide accommodation, transport, security and other facilities by the concerned Deputy Commissioner (DC) and others. The circular dated 06.02.2002 is reproduced below:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
মন্ত্রিপরিষদ বিভাগ
জেলা প্রশাসন-৪ শাখা।

নং-মপবি/জেলা-৪/২(৯৯)৯৮/৫৩২

তারিখঃ ৬ ফেব্রুয়ারী ২০০২
২৪ মাঘ ১৪০৮

বিষয়ঃ বাংলাদেশ সুপ্রীমকোর্ট বিচারপতিগণের জন্য দেশের অভ্যন্তরে সরকারী ও বেসরকারী ভ্রমণকালীন নিরাপত্তা ও আনুষঙ্গিক সুবিধা নিশ্চিতকরণ প্রসঙ্গে।

সূত্রঃ (ক) আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়ের পত্র নং-৭৩৭-বিচার-৪/১ এইচ-৩/২০০০, তারিখ ২৪/৪/২০০০।

(খ) স্বরাষ্ট্র মন্ত্রণালয়ের পত্র নং ভিআইপি-১/৯৫(রাজ-৪) ১২২৩, তারিখ ৭/৮/২০০১।

(গ) সংস্থাপন মন্ত্রণালয়ের পত্র নং সম(প্রঃ ৩)/বিবিধ-১৮/২০০০-২০৮, তারিখ ২৮.১.২০০২।

বাংলাদেশ সুপ্রীম কোর্টের আপীল বিভাগ ও হাইকোর্ট বিভাগের বিচারপতিগণের জেলায় সফর কালে মন্ত্রিপরিষদ বিভাগ থেকে জারিকৃত Warrant of Precedence, 1986 (এপ্রিল ২০০০ পর্যন্ত সংশোধিত) অনুযায়ী প্রাপ্তি সাপেক্ষে তাঁদেরকে সার্কিট হাউসে ভি.আই.পি কক্ষ বরাদ্দ,

যানবাহন সরবরাহ, নিরাপত্তার বিধান এবং অন্যান্য আনুষঙ্গিক সুবিধাদি নিশ্চিত করার জন্য নির্দেশক্রমে অনুরোধ করা হলো।

স্বাক্ষর-

৬.২.২০০২

(মোঃ আবু বকর সিদ্দিক)

সিনিয়র সহকারী সচিব

জেলা প্রশাসক

----- (সকল)

Thereafter, on 11.06.2012 the Cabinet Division vide its memo No.04.111.004.00.00.030.2012/81 asked the Ministry of Home Affairs to take proper steps for providing Guard of Honour to the Supreme Court Judges (both Divisions) while they are on tour. The contents of the said memo runs as follows:

“মাননীয় সুপ্রীম কোর্টের হাইকোর্ট বিভাগ Warrant of Precedence অনুসরণে আপীল বিভাগ ও হাইকোর্ট বিভাগের মাননীয় বিচারপতিগণকে সালামী (গার্ড অব অনার) সহ পূর্ণ প্রটোকল প্রদানের নির্দেশ দিয়েছেন। এ্যাডভোকেট মনজিল মোরশেদের দায়েরকৃত জনস্বার্থ মামলা (Public Interest Litigation) রীট পিটিশন নম্বর ৭০২২/২০১২-এ বিচারপতি এ,এইচ, এম শামসুদ্দিন চৌধুরী এবং বিচারপতি জাহাঙ্গীর হোসাইন সমন্বয়ে গঠিত বেঞ্চ ০৮.০৫.২০১২ তারিখে এ মর্মে আদেশ প্রদান করেন।

০২। পুলিশ কর্তৃক সালামী (গার্ড অব অনার) প্রদানের বিষয়টি স্বরাষ্ট্র মন্ত্রণালয়ের কার্যপরিধিভুক্ত হওয়ায় এ বিষয়ে মাননীয় হাইকোর্ট বিভাগের নির্দেশনার পরিপ্রেক্ষিতে যথাযথ কার্যক্রম গ্রহণের জন্য নির্দেশক্রমে অনুরোধ করা হল।”

On 16.06.2012 the Cabinet Division by another circular informed all the Deputy Commissioners and the Divisional Commissioners to follow the Warrant of Precedence *in toto* for providing the protocol service to the VIPs. The contents of the said circular runs as follows:

“জেলা সফরকারী অতীব গুরুত্বপূর্ণ ব্যক্তি (ভিআইপি)গণকে প্রটোকল প্রদানের ক্ষেত্রে ওয়ারেন্ট অব প্রিসিডেন্স হুবহু অনুসরণের জন্য মাননীয় সুপ্রীম কোর্টের হাইকোর্ট বিভাগ সদয় নির্দেশনা দিয়েছেন।

০২। উপর্যুক্ত নির্দেশনা যথাযথভাবে বাস্তবায়নের জন্য সকল জেলা প্রশাসককে অনুরোধ করা যাচ্ছে।

০৩। এ বিষয়ে তাঁর জেলার পুলিশ সুপার, জেলা পর্যায়ের অন্যান্য সংশ্লিষ্ট কর্মকর্তা ও উপজেলা নিবাহী অফিসারগণকে জবুরি ভিত্তিতে অবহিত করার জন্য অনুরোধ করা হল।”

From the above circulars it is very clear that the government has provided adequate logistical support to the Supreme Court Judges while they are on tour either official or private.

Whenever we visit any District we observe that usually the Deputy Commissioner or his representatives, Superintendent of Police or his representative remains present at the place of lodging of the visiting Judge. We

have also observed that the District and Sessions Judge or Additional District and Sessions Judge usually remain present when the Judges visit the District Head Quarter or Upazila Head Quarters or any other place of the country. Sometimes there may be departures from the common practice and norm, which is not desirable at all.

Everyone responsible for providing protocol service for the VIPs, particularly the District and Sessions Judge, Deputy Commissioner, Police Super of the respective District should keep in mind that Judges of the Supreme Court are high ranking VIPs of the country. As per Warrant of Precedence, 1986 the Judges of the Appellate Division of the Supreme Court of Bangladesh rank in serial No.8 i.e. equivalent to the State Ministers and the Judges of the High Court Division of the Supreme Court of Bangladesh are in serial No.9, they enjoy the status of the State Ministers. Thus, it is expected from all concerned that the protocol provided to the State

Ministers must be provided to the Judges of the Supreme Court (both Divisions).

The government by issuing various circulars has given directions to the DCs and SPs of the District to provide proper protocol service. But unfortunately till this date no circular has been issued neither from the Office of the Registrar General nor from the Ministry of Law Justice and Parliamentary Affairs as to how the protocol service should be provided to the Supreme Court Judges by the District Judgeship, when their Lordships are on tour to any District on official or private visit.

Nobody should forget that a Supreme Court Judge is not a mere individual. He is the Judge of Highest Judiciary of the country. He carries a constitutional entity and grace of the highest judicial forum, one of constitutional organs of the State as well with him. Showing deliberate disregard to any of Supreme Court Judges by act, conduct or omission thus indisputably a

conscious blow to it which impacts adversely on public perception.

The facts unveiled demonstrate quite clearly that the contemnor No.1, for couple of years, did not feel the urge to get himself righted and seek apology before this Court for his unceremonious act and omission deliberately shown to his Lordship, during his visit at Feni.

We want to conclude that the contemnor No.1 Md. Firoz Alam despite being aware about the visit of the Honorable Judge Mr. Justice Syed Amirul Islam felt inspired, not by any fair cause, to disgrace him and the entity attached to him, by his grave extreme discourteous act, conduct and inaction. This is a sheer audacity as well on the part of the contemnor. Such downright disregard towards the Judge of the Highest Court of the country can never go unpunished.

Paying no attention or unexplained failure to pay due attention to the visit and presence of a Supreme

Court Judge when he stays in the territorial jurisdiction of a certain judgeship rather taints the elegance of the Supreme Judiciary. Chiefly the District Judge, the head of District Judgeship is obviously obliged to make the honour and elegance of the Supreme Court Judge visible to all by attending him, without affecting judgeship's work.

A Circular is thus expected to be designed intending to provide guidance to the District Judge and other Judges holding judicial office of the sub-ordinate judiciary, the Circular must relate to standards of conduct of judges of the sub-ordinate judiciary for application during the visit of Supreme Court Judges in the territory of Bangladesh.

It has become a common practice of the office of Registrar General that they send the tour programme of the Judge of the Supreme Court to the concerned District and Sessions Judge of a District and to the Deputy Commissioner, to provide protocol service to the visiting

Judge. We are of the view that there should be a proper circular from the office of the Registrar General and the Ministry of Law, Justice and Parliamentary Affairs to the District and Sessions Judges to provide protocol service remaining present at the place of lodging of the visiting Judge. Accordingly, the office of the Registrar General of Bangladesh Supreme Court and the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Law & Justice Division, Dhaka are hereby directed to issue a circular to all the District and Sessions Judges of the country for ensuring and providing proper protocol to the visiting Judges of the Supreme Court. The circular should contain the following directions.

1. At the time of visiting any District head quarter by a Supreme Court Judge in holidays at least one judicial officer holding the status of a District and Sessions Judge/Additional District and Sessions Judge shall receive the judge at the circuit house or any other place of lodging of the visiting

Judge within the District town. If the District Judge is present in the District head quarter he must make a courtesy call on to the Hon'ble Judge of the Supreme Court.

2. If the visit of the Supreme Court Judge occurs during weekdays during office time, the Judge in-Charge, Nejarat will attend the visiting Judge. But after Court hour the District Judge or in his absence at least one judicial officer having the status of District Judge/ Additional District Judge will make a courtesy call on to the visiting Judge at his lodging within the District town.

3. If the visiting Supreme Court Judge stays in an Upazilla town or in any village, the Judge in-Charge, Nejarat or a senior staff of the judgeship shall attend him.

4. At the time of departure of the Judge from the visiting station District and Sessions Judge/ Additional District and Sessions Judge must

remain present along with Deputy Commissioner or his representative and Police Super or his representative of the respective District.

However, now we are giving our decisions regarding the case in hand. We have carefully gone through the application for tendering unconditional apology from the contemnor-opposite parties. From the order dated 27.10.2003 passed by his Lordship Mr. Justice Syed Amirul Islam it appears that his Lordships mentioned that "the District Judge Md. Firoz Alam deliberately and wilfully refused to see his Lordship at Feni during his stay and he also by exerting his official power prevented the other staff of the Judgeship from seeing his Lordship at Feni." From above it is presumed that his Lordship considered that the contemnor-opposite parties No.2 and 3 were prevented by the contemnor No.1 from seeing him in the place of his stay. Since the contemnor-opposite parties No.2 and 3 are the subordinates of the District Judge they had no other

alternative, but to obey the order of the District Judge. It is also presumed that the contemnors No.2 and 3 possibly did not want to antagonise their boss the District Judge of Feni and for this reason they restrained themselves from seeing his Lordship Mr. Justice Syed Amirul Islam at Feni. In the circumstances we are of the view that the contemnors No.2 and 3 did not show disrespect to the Hon'ble Judge of the Supreme Court wilfully. Thus, we are inclined to exonerate the contemnors No.2 and 3 from the charges brought against them. However, the statements of the contemnor No.1, Md. Firoz Alam, the then District and Sessions Judge, Feni made in his application does not appear to be satisfactory. Chronological events of his conduct impel us to convict him for wilful disobedience shown to the Hon'ble Judge Mr. Justice Syed Amirul Islam while he was visiting Feni. We are of the view that the contemnor No.1 Md. Firoz Alam had undermined the authority, dignity, prestige and sanctity of the very prestigious seat of justice defying

his Lordship's order. Thus, we find it difficult to accept the apology of the contemnor-opposite party No.1. Accordingly, the contemnor-opposite party No.1 is found guilty for the offence of contempt of Court.

In the background of the facts and circumstances of this case as we have stated above we are also of the view that this kind of arrogant behaviour on the part of a subordinate judicial officer should not be taken leniently. However, since the contemnor No.1 has already retired from service and is enjoying his retired life, we have taken lenient view to impose a small sentence after convicting him for contempt. Accordingly, we convict the contemnor No.1, Md. Firoz Alam, son of late Abdul Latif Talukder, the then District and Sessions Judge, Feni for contempt of Court and sentence him accordingly to pay a fine of Tk.5,000.00, in default to suffer simple imprisonment for 7(seven) days.

The contemnor No.1 is directed to deposit the fine amount of Tk.5,000.00 with the government treasury

challan within 15(fifteen) days from the date of receipt a copy of this judgment.

With the above, the instant Suo Muto Rule is made absolute in part so far as it relates to the contemnor No.1, Md. Firoz Alam, son of late Abdul Latif Talukder only. The contemnors No.2, Yar Ahmed, son of late Faiz Ahmed and 3. Altaf Hossain, son of Belayet Hossain are hereby exonerated from the liability of the Rule.

Let a copy of this judgment be communicated to the Secretary, Ministry of Law, Justice and Parliamentary Affairs and the Registrar General and other concerned, including the Former Judge of the Supreme Court of Bangladesh Mr. Justice Syed Amirul Islam, at once.

S M Kuddus Zaman, J.

I agree.

Ismail H. Pradhan
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