

Present:
 Mr. Justice Mohammad Bazlur Rahman
 and
 Mr. Justice Md. Ruhul Quddus

Writ Petition No.8354 of 2010

Bahar Uddin Ahmed and others
 ...Petitioners

-Versus-

Secretary, Ministry of Liberation War Affairs and
 others
 ...Respondents

Mr. Zamirul Akhter, Advocate
 ... for the petitioners

Mr. J. K. Paul, Advocate
 ...for respondent Nos.2-4

Judgment on 11.11.2012

Md. Ruhul Quddus, J:

This Rule at the instance of the legal heirs of a martyr freedom fighter was issued for a direction upon the respondents to give them monthly state honorarium and other benefits, issue martyr freedom fighter's certificate in name of the martyr and to publish his name in the official gazette.

The petitioners are the brothers, sister and proud mother of a martyr freedom fighter named Tajul Islam who sacrificed his life in 1971 during the war of liberation in a front battle against the occupation army at Chhagalnaiya EPR Camp, Feni.

Respondent 2 Bangladesh Muktijodda Kalyan Trust (hereinafter called the Trust) is the successor of Bangladesh Freedom Fighters Foundation and has

been established under The Bangladesh (Freedom Fighters) Welfare Trust Order, 1972 (P. O. 94 of 1972) for the welfare of freedom fighters and family members of the martyrs of liberation war. A board of trustee is entrusted with the management of the Trust, which has made the Bangladesh Freedom Fighters Welfare Trust Regulations, 1984 (hereinafter called the Regulations, 1984) in exercise of power under article 17 of P. O. 94 of 1972 to regulate and control its affairs that includes enlistment of their names and payment of state honorarium in their favour.

It is contended in the writ petition that late Tajul Islam fought the war of liberation in 1971. After completion of successful training at Chottakhola Training Camp in India, he started participating in different battles under the command of Martyr Captain Shamsul Huda. At one stage during the war of liberation he (Tajul Islam) died in a battle against Pakistani occupation army at Chhagalnaiya EPR Camp, Feni.

Bangabandhu Sheikh Mujibur Rahman, the architect of independent Bangladesh wrote two letters of condolence to his (Tajul Islam's) father Nur Ahmed since deceased and sent him two cheques each worth Taka 2000/- (two thousand) only from the Prime Minister's Relief Fund to help his family.

Nur Ahmed, the father of martyr freedom fighter Tajul Islam filed an application to Muktiyodda Kalyan Trust on 7.4.1989 for granting him state honorarium (annex-F). In response thereto the Trust appointed two officials, namely, Captain (Rtd) Nurul Huda and Md. Abdul Alim Molla who inquired into the matter and recognized Tajul Islam as a martyr freedom fighter and

recommended state honorarium with other facilities which he (Nur Ahmed) was entitled to get under the Regulations, 1984. The inquiry report dated 7.4.1990 (annex:F-1) runs as follows:

“ বাংলাদেশ মুক্তিযোদ্ধা কল্যান ট্রাস্টের পত্র নং-ক৬/রেকর্ড / ১৫১/৮৭১ তাং ১৮/৩/১৯৯০ইং মূলে শহীদ তাজুল ইসলাম পিতা নুর আহম্মদ গ্রাম সত্যনগর পোঃ চাদগাজী উপজেলা ছাগলনাইয়া জেলা ফেনী ১৯৭১ সালে স্বাধীনতাযুদ্ধে মুক্তিযোদ্ধা হিসাবে শহীদ বরন করেছেন কিনা এর সত্যতা যাচাই করার জন্য আমরা নিম্ন স্বাক্ষরকারীদ্বয় উক্ত এলাকায় যাই এবং জনসাধারণের নিকট জিজ্ঞাসাবাদ করি। শহীদ তাজুলের পিতাসহ মোট ৯ জনের বক্তব্য লিপিবদ্ধ করি যাহা অত্র প্রতিবেদনের সাথে সংযুক্ত আছে।

সরজমিনে তদন্তে প্রাপ্ত তথ্যানুযায়ী শহীদ তাজুল ইসলাম ১৯৭১ সালে স্বাধীনতাযুদ্ধে সরাসরি অংশগ্রহনকারী মুক্তিযোদ্ধা হিসাবে প্রমান পাই। লিখিত ছাড়া মৌখিকভাবে আমরা অনেক বয়স্ক গন্যমান্য ব্যক্তিকে জিজ্ঞাসাবাদ করিয়াছি। একবাক্যে শহীদ তাজুল ইসলাম একজন শহীদ মুক্তিযোদ্ধা বলে সবাই স্বীকার করিয়াছেন। জিজ্ঞাসাবাদ ও তদন্তে জানা যায় শহীদ তাজুল ইসলাম পূর্বদেবপুর, ইপিআর ক্যাম্প হামলার সময় পাকবাহিনীর সাথে মুখোমুখি যুদ্ধে পাকবাহিনীর গুলিতে ঘটনাস্থলে শহীদ হন।

আমরা শহীদ তাজুলের কবর, যুদ্ধের স্থান ও শহীদ হওয়ার জায়গাটি পরিদর্শন করি এবং চারপাশের লোকজনকে জিজ্ঞাসাবাদ করি। সবাই তাকে শহীদ বীর মুক্তিযোদ্ধা হিসাবে অভিহিত করেছেন। তিনি ভারতের চোগাখোলা ট্রেনিং সেন্টার থেকে প্রশিক্ষণ গ্রহন করে মুক্তিযুদ্ধ শুরু করেন। শহীদ ক্যাপ্টেন সামছুল হুদার অধীনে তিনি যুদ্ধ করেন।

যুদ্ধকালীন সময়ে তাহার সহযোদ্ধা রাষ্ট্রীয় সম্মানি ভাতাভোগী মুক্তিযোদ্ধা জনাব আবুল বশির চৌধুরীর লিখিত জবানবন্দী গ্রহন করি তিনিও শহীদ তাজুলকে তার সাথী শহীদ মুক্তিযোদ্ধা হিসাবে অভিহিত করেছেন।

তার পিতা জনাব নুর আহম্মদকে রাষ্ট্রীয় শহীদ পরিবার হিসাবে যাবতীয় আর্থিক সুযোগ সুবিধা প্রদানের সুপারিশ করিলাম।”

Nur Ahmed filed another application in 1993 to the Managing Director of the Trust for granting him state honorarium. On receipt of the same, the Managing Director of the Trust requested the Deputy Commissioner and Police Super, Feni to inquire into the matter and furnish a report. After conducting the enquiry, both of them furnished two separate reports recognizing Tajul Islam as a martyr freedom fighter. Subsequently the report furnished by the Deputy Commissioner was missing from the record. However, the report of the Police Super is lying with the record (annex-H). Still the unfortunate father of the martyr did not get any honorarium from the Trust entrusted to do it. In 1999 the Commander of Muktijodhdha Sangsad, Chhagalnaiya Upazila Command being instructed by the Trust inquired again into the matter and submitted another report describing Tajul Islam a martyr freedom fighter. The said report was witnessed by another freedom fighter, a school teacher and U.P member of that area. Relevant portion of the report is quoted below:

“ সরাসরি স্বাধীনতায়ুদ্ধে অংশগ্রহনকারী শহীদ তাজুল ইসলামকে আমি চিনি। তিনি পাক বাহিনীর গুলিতে শহীদ হন। তার তদন্ত প্রতিবেদন লিখে নিজেকে ধন্য মনে করছি। তার মত দেশ প্রেমিক যুক্তিযোদ্ধা সমাজে বিরল। আমি শহীদ ও তার বৃদ্ধ মাতা পিতার সর্বোচ্চ মঙ্গল কামনা করি।”

Petitioner 2 Mobinur Islam, the younger brother of Tajul Islam made a representation to the Hon'ble Prime Minister in 1999 for granting state honorarium. In the said representation he brought allegation against an officer of the Trust named Fazlur Rahman for demanding graft of Taka 25,000/- from his father Nur Ahmed for processing the file. The office of the Hon'ble Prime Minister responded thereto by issuing a letter as contained in Memo No. 820

dated 10.3.1999 asking the Managing Director of the Trust to grant state honorarium in favour of Nur Ahmed stating that the letter of condolence issued by Bangabandhu Sheikh Mujibur Rahman in 1972 would be treated as his (Tajul Islam's) certificate of martyr freedom fighter (annex-J). Pursuant to the said letter, the Director (Welfare) of the Trust prepared an office note on 10.5.1999 contents of which are self explanatory and reproduced below for better appreciation of facts.

“ ব্যবস্থাপনা পরিচালক মহোদয়ে ৪৮ ও ৪৯ অনুচ্ছেদের নির্দেশের আলোকে কল্যাণ বিভাগের উপ-ব্যবস্থাপক জনাব মোঃ ফজলুর রহমানের বিরুদ্ধে প্রাপ্ত অভিযোগ এবং শহীদ তাজুল ইসলামের পিতা নুর আহাম্মদের ব্যক্তিগত নথি পরীক্ষান্তে তথ্য উপস্থাপন করা হইলঃ

জনাব নুর আহাম্মদ শহীদ মুক্তিযোদ্ধা তাজুল ইসলামের পিতা হিসাবে ভাতা পাইবার জন্য আগষ্ট ৮৯ ট্রাষ্টে আবেদন করেন পৃঃ ৪। ট্রাষ্টের সরেজমিনে তদন্ত করানো হয় পৃঃ ২০। জনাব নুর আহাম্মদ কর্তৃক তদন্ত কর্মকর্তাদের নিকট দেওয়া লিখিত বক্তব্যে বলিয়াছেন তার ছেলে তাজুল ইসলামের সাথে মুক্তিযোদ্ধা ছিল জনাব বশীর চৌধুরী পৃঃ ১৮। জনাব বশীর চৌধুরী রাষ্ট্রীয় সম্মানী ভাতাপ্রাপ্ত মুক্তিযোদ্ধা। তার জবানবন্দি ও তদন্ত কর্মকর্তার প্রতিবেদনে শহীদ তাজুল ইসলাম মুক্তিযোদ্ধা হিসাবে সন্দেহহীন প্রত্যক্ষ প্রমাণ পাওয়া যায়। তারপরও যুক্তিহীন কারণ দেখিয়ে নথিটি বন্ধ করিয়ে দেওয়া হয় অনুঃ ৩।

অতঃপর জনাব মোঃ নুর আহাম্মদ এর ২২ পৃষ্ঠায় রক্ষিত আবেদনের প্রেক্ষিতে পুনরায় কেইসটি জেলা প্রশাসক/পুলিশ সুপারের মাধ্যমে সরেজমিনে তদন্তের নির্দেশ দেওয়া হয় অনুঃ ৯। পুলিশ সুপারের প্রতিবেদন পাওয়া গিয়াছে পৃঃ ২৪। কিন্তু জেলা প্রশাসকের যাচাই প্রতিবেদন ফরমটি ফাইল হইতে গায়েব হইয়া যায়। পুলিশ সুপারের প্রতিবেদনে শহীদ তাজুল ইসলাম মুক্তিযোদ্ধা প্রমাণিত হয়েছে। শুধুমাত্র পুলিশ সুপারের বস্তুনিষ্ঠ প্রতিবেদনের উপর নির্ভর করেও ভাতা দেওয়া যায়। বহু আবেদনকারীকে পুলিশ সুপারের প্রতিবেদনের ভিত্তিতে ইতিমধ্যে আমরা ভাতা দিয়েছি।

জনাব নুর আহাম্মদের ২৫ পৃষ্ঠায় রক্ষিত আবেদন এবং সুপারিশের আলোকে সংশ্লিষ্ট কর্মকর্তা জনাব ফজলুর রহমান বিস্তারিত তথ্য সহ নথিটি উপস্থাপন করেন অনুঃ ১২-১৭। আবারও যুক্তিহীন কারণ দেখিয়ে নথিটি বন্ধ করে দেওয়া হয়। ফাইলের ৩৭ পৃষ্ঠায় রক্ষিত পেপার কাটিং অনুযায়ী শহীদ তাজুল ইসলামের মুক্তিযোদ্ধার স্বপক্ষে প্রমাণ পাওয়া যায়।

জনাব নুর আহাম্মদ জানান যে, ফজলুর রহমান ডি.সি.র তদন্ত প্রতিবেদনটি ছিঁড়ে ফাইল থেকে ফেলে দিয়েছে। নথিতে রক্ষিত ৩১ পৃষ্ঠার আবেদনে ২৫,০০০/- পচিশ হাজার টাকা ঘুষ প্রদানে ব্যর্থ হওয়াতেই ফজলুর সাহেব জালিয়াতি করেছেন বলে জনাব নুর আহাম্মদ জানান।

আমার তদন্তে দেখা যায় জনাব ফজলুর রহমান অত্র অফিসের লোক বিধায় ফাইলটি নাড়াছাড়া করেছেন। কিন্তু ঘুষ কিংবা প্রতিবেদন ছিঁড়ে ফেলেছেন কিনা আমি প্রমাণ পাইনি”।

Still the officials of the Trust did not proceed to grant any honorarium to Nur Ahmed. Ultimately the unfortunate father died on 10.12.2001. After his sad demise, petitioner 1 Bahar Uddin Ahmed served a notice demanding justice upon the respondents (annex-M) calling upon them to pay state honorarium to the heirs of Tajul Islam, issue martyr freedom fighter's certificate and publish his name in the officials gazette. Getting no response the petitioners moved in this Court with the instant writ petition and obtained the Rule.

Respondent 2 filed an affidavit-in-opposition followed by a supplementary affidavit-in-opposition challenging the authenticity of the letter of condolence (annex-D) and stating, *inter alia*, that the office of the respondent-trust already sent a letter bearing No.Ka-4/ record/ shaheed bandho bhata /10/ 1589 dated 18.8.2010 to petitioner 4 asking her to submit the provisional certificate issued in the name of the martyr, which she failed; that

petitioner 4 filed an application dated 29.8.2010 to the Hon'ble State Minister for Liberation War Affairs for issuing provisional certificate in the name of her son and to publish his name in the official gazette; that a committee has been formed for scrutiny of the list of martyr freedom fighters, which has been working to prepare a fresh list and her application is under consideration.

Mr. Zamirul Akhter, learned Advocate appearing for the petitioners submits that Nur Ahmed, the father of martyr Tajul Islam and after his death the petitioners left no stone unturned to establish their rights as heirs of the martyr. Under the Regulations, 1984 respondents are under an obligation to grant state honorarium in their favour. By several inquiry reports it has been clearly established that Tajul Islam was a valiant freedom fighter who met his death in a battle during the war of liberation. The inaction of the respondents in enlisting his name and issuing certificate to that effect is a sheer irresponsibility, an act of negligence, ungratefulness and disregard to the martyr who sacrificed his life for independence of this Country.

Mr. J. K. Paul, learned Advocate appearing for respondents 2-4 submits that the Trust was always careful and responsible in dealing with the matter. It already issued a letter dated 7.8.2010 asking petitioner 4 to produce the 'provisional certificate' issued by the Ministry of Liberation War Affairs in favour of the martyr Tajul Islam. Since she or any other petitioner failed to do so, it could not grant state honorarium in their favour. Learned Advocate also challenges the authenticity of the letter of condolence issued by Bangabandhu Sheikh Mujibur Rahman (annex-D) on the plea that Bangabandhu returned

home on 10.1.1972 but the said letter was allegedly issued on 3.1.1972. Mr. Paul finally submits that a committee is working on further enlistment of the martyr freedom fighters and publication of their names in official gazette. Unless the process is completed and a provisional certificate is issued in the name of Tajul Islam, it is difficult for the Trust to grant honorarium in favour of his parents/legal heirs.

It appears from annex-D that initially it was issued on 26.12 meaning 26.12.1972 but subsequently the date was corrected with a single stroke of pen and by inserting "3.1" meaning 3.1.1973. It further appears that annex-E is another letter of condolence issued on 11.6 meaning 11.6.1972 by Bangabandhu Sheikh Mujibar Rahman. Authenticity of this letter and cheque is not denied by the respondents. Beside the words of condolence, each of the letters bears statement of sending a cheque of Taka 2000/- from the Prime Minister's Relief and Welfare Fund to the concerned Sub-Divisional Officer in order to support the family of Nur Ahmed. In the context, it does mean that when it was detected that that in the same year i.e. 1972 another letter of condolence with a cheque was issued earlier on 11.6.1972 in favour of Nur Ahmed, officials of the Prime Minister's Office corrected the date to be 3.1.1973. So for correction of the date by substituting "3.1" in place of "26.12" on the letter (annex-D) it cannot be held to have been issued on 3.1.1972. Although the petitioners did the same mistake in paragraph 9 of the writ petition by stating that the letter was issued on 3.1.1972, it should be read in proper context and under the facts and circumstances of the present case this

Court is convinced that actually annex-D is a genuine document and was issued on 3.1.1973. Furthermore, the Prime Minister's Office subsequently recognized the said letter of condolence. (vide annex-J)

As many as twenty documents have been annexed with the writ petition out of which seventeen are relating to the identity of Tajul Islam, wherefrom it comes out that he was a valiant freedom fighter and was killed by the occupation army in a battle at Chhagalnaiya EPR Camp. If still there is necessity of any 'provisional certificate' from the Ministry of Liberation War Affairs, it is their duty to issue such certificate and to make sure that the certificate reaches the family members of the martyr, but we see the reverse picture. The poor father of the martyr had filed applications one after another to different authorities along with all credible documents in support of the identity of his son, but did not get any sympathy and positive response from any of the respondents.

The application dated 17.4.1989 filed by Nur Ahmed was accompanied by certificates issued by the local U. P. Chairman, Commander of Upazila Muktijodda Sangsad and the letters of condolence issued by Bangabandhu Sheikh Mujibar Rahman himself. The Trust itself inquired into the matter several times wherein Tajul Islam was found to be a martyr freedom fighter. The Police Super, Feni furnished another report in prescribed form supporting the same contention. The report was made on the basis of a prior enquiry conducted by the Officer-in-charge, Chhagalnaiya Police Station and was witnessed by a U P member, school teacher and another freedom fighter of that

area (annex-H). Annex-I is another report furnished by the Upazila Commander, Bangladesh Muktijodda Shangsad, Chhagalnaiya. Annex-J is the letter issued by the office of Hon'ble Prime Minister asking the Managing Director of the Trust to pay state honorarium to Nur Ahmed, the father of martyr Tajul Islam. In the said letter it was also mentioned that the letters of condolence issued by Bangabandhu Sheikh Mujibur Rahman would be treated as his certificates.

Authenticity of the letter of condolence dated 11.6.1972 (annex-E) or any inquiry report which recognizes Tajul Islam as a martyr freedom fighter is not denied by the respondents. We also do not find anywhere in the affidavit-in-opposition filed by the respondent-trust that it made any correspondence, reply or response to Nur Ahmed. After his sad demise, a letter was issued to his widow Taj Nehar Begum (herein petitioner 4) on 17.8.2010 asking her to produce the 'provisional certificate'. The respondent-officials are entrusted to look after the welfare of the freedom fighters and their beneficiaries, whereas it took only 21 years to make a reply on 17.8.2010 in response to the application dated 7.4.1989 filed by Nur Ahmed, who was no more in this world to see the result of his application in recognition of the sacrifice of his son. We wonder, these officials are how ungrateful and disrespectful to the martyrs.

Although the office note dated 10.5.1999 of the Director (Welfare) of the Trust as quoted above shows that in absence of any 'provisional certificate' or any report from the Deputy Commissioner many orders were passed earlier on the basis of report furnished by Police Super, the Trust did not respond to

the application of Nur Ahmed in a positive manner despite all necessary documents an enquiry reports in support of the identity of Tajul Islam were there, but asked petitioner 4 Taj Nehar Begum, mother of the martyr to produce the 'provisional certificate'. In the present case, the petitioners have not only positive reports from the Commanders of Upazila Muktijodda Shangsad, Police Super, but the Trust itself made inquiry through its officers and found Tajul Islam a martyr freedom fighter. Therefore, the respondents' plea of submission of 'provisional certificate' as a pre-condition of granting state honorarium is nothing but denial to the petitioners' rightful claim.

The Regulations, 1984 provides that the parents/minor brother and sister of an unmarried martyr would be entitled to monthly state honorarium from the date of filling application. On the date of filling the application on 7.8.1989, petitioner Nos.1-3 were majors, of them petitioner No.3 was married and residing at her husband's house and therefore, they do not come within the definition of dependant as defined in article 2(d) of P. O. 94 of 1972 (annex-N to the supplementary affidavit filed by the petitioners). Since Nur Ahmed, the father of the martyr filed the application accompanied by all necessary documents on 7.8.1989, on his death petitioner No.4 Taj Nehar Begum, the mother of the martyr is entitled to get the honorarium and the respondents are bound to grant it in her favour, issue a certificate in the name of martyr Tajul Islam and accordingly publish his name in the official gazette.

In view of the above the Rule is made absolute so far it relates to petitioner 4 Taj Nehar Begum, the mother of martyr freedom fighter Tajul

Islam. Respondents 2-4 are directed to grant state honorarium in her favour and send the arrear calculating from 7.4.1989 till date to the account maintained by Taj Nehar Begum, widow of Nur Ahmed, of Village-Satya Nagar, Post Office-Chandghati, Police Station-Chhagalnaiya, District-Feni within three months from receipt of this judgment. In the meantime respondent 1 Ministry of Liberation War Affairs represented by its Secretary is directed to enlist the name of Tajul Islam, son of Nur Ahmed, of Village- Satya Nagar, Post Office-Chandghati, Police Station- Chhagalnaiya, District-Feni as a martyr freedom fighter and publish his name in official gazette. Any further negligence in dealing with the matter will be dealt strictly. Petitioner 4 Taj Nehar Begum will furnish her account number to the Trust within a month.

Mohammad Bazlur Rahman, J:

I agree.