

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 7747 OF 2015
IN THE MATTER OF:

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

-And-

IN THE MATTER OF :

Md. Iftexhar Husain Chowdhury

.....PETITIONER

-Versus-

Bangladesh and others

...RESPONDENTS

Mr. Zafarullah Choudhury with
Mr. Mohammad Wahiduzzman, Advocates
.... For the Petitioner

Mr. Amit Talukder, DAG
Mr. Toufique Sajawar Partho, AAG
... For the Respondents

Heard on: 05.05.2019, 07.05.2019,

07.07.2019 & 21.07.2019

Judgment on: 29.07.2019

Present:

Ms. Justice Naima Haider

&

Mr. Justice Khizir Ahmed Choudhury

Naima Haider, J:

In this Public Interest Litigation filed under Article 102 of the Constitution, the petitioner seeks our intervention for establishing “Integral Medical Centre for Research and Training (Non Profit) Project” (“the Project”). Rule Nisi was issued in the following terms:

Let a Rule Nisi was issued calling upon the respondents to show cause as to why the respondents should not be directed to implement the recommendation given by the respondent no.2 vide memo no. D.O. No. 53.23.16.00.00.05.2002(Part-1) -215 dated 01.06.2003 in connection with establishment of “Integrative Medical

Centre for research and Training (non-profit) project” in Bangladesh under China’s Economic and Technical Assistance program(Annexure-D) and also why the respondents should not be directed to implement the Memo No. shapkom/shastro-3/CM EL-22/2005/32 dated 24.05.2006 issued by the respondent no.1 pursuant to Memo No. D.O. No. 53.23.16.00.00.05.2002(Part-1) - 215 dated 01.06.2003 issued by the respondent no.2 in connection with establishment of “Integrative Medical Centre for research and Training (non-profit) project” in Bangladesh under China’s Economic and Technical Assistance program and/or pass such other or further order or orders as to this Court may seem fit and proper.

The relevant facts in brief, are as follows: the petitioner is a citizen of Bangladesh. He completed B.A. (Hons) in Economics from University of Dhaka. He thereafter completed his B.Sc. (Economics) from London School of Economics and Political Science. The petitioner is the only Bangladesh national who is a member of the editorial committee of the first time published “International Standard Chinese-English Basic Nomenclature of Chinese Medicine”.

The petitioner, during the 1980s moved a proposal to introduce Chinese medicine in Bangladesh since Chinese “alternative medicine” is one of the most reputed therapeutic in the world. The petitioner approached the office of the Director General (Industries) with the proposal for setting up the Project. The office of the Director General (Industries) after reviewing the project proposal and other documents, recommended that the proposal was a viable joint venture investment project for Bangladesh and

forwarded the proposal to the Ministry of Health and Family Welfare with positive recommendation.

Following the change of the Government in 1991, the Ministry of Health and Family Welfare by order dated 16.01.1993 approved the Project as a pilot/experimental project on certain terms and conditions. The Board of Investment forwarded the Ministry's order to the petitioner by its letter dated 27.01.1993. During the 1999-2000, the matter was drawn to the attention of the Hon'ble Prime Minister, given that the progress became slow. Thereafter, the respondent No.1, after being instructed by the office of the Hon'ble Prime Minister, forwarded a letter to the Chinese Embassy in Dhaka with confirmation of the approval of the Project. Subsequently, the Director of the Prime Minister's Office directed all concerned to take effective steps to implement the Project. However, no effective steps had been taken. Thereafter, another letter was issued on 18.08.2002 to all concerned Departments of the Government, with a direction to provide assistance to the petitioner and also update the Prime Minister's Office about the progress. Subsequently in 2003, the Prime Minister's Office once again issued another letter to all relevant Departments of the Government regarding the aforesaid. It was also confirmed by letter dated 01.06.2003 that the Project was sanctioned as pilot scheme of the Government and that special status was accorded to it.

Thereafter, during a meeting held on 01.08.2004, it was decided that the Project would be taken over as a project between the Government of Bangladesh and Manjala Enterprise Limited. Manjala Enterprise Limited would submit a proposal which would be considered by the Government. Following the decision taken on 01.08.2004, a three member committee

was formed to prepare a preliminary development project proforma. This was prepared and submitted to the Director General, Health Services and subsequently, it was sent to the Secretary, Economic Relations Division for necessary steps to be taken. However, till date, no steps had been taken. The petitioner approached the concerned Ministry regarding the development of the Project but the petitioner was informed that no further developments have been recorded. Letters were issued from time to time for taking steps to implement the Project but there was no response. Being aggrieved, the petitioner moved this Division and obtained the instant Rule.

The learned Counsel for the petitioner, taking us through the writ petition and the documents annexed, submits that the Project will be first of its kind, would benefit the people of the country and will also increase the cooperation between the Governments of Bangladesh and China. The learned Counsel also placed elaborate submissions on the objective of the Project and the need to implement the Project in Bangladesh. The learned Counsel also submits that the Project had been approved by the highest authority and yet, the project has not been implemented for more than 25 years and thus intervention of this Division is necessary. The learned Counsel further submits that intervention from this Division is necessary given that similar projects had been implemented in different jurisdictions, including India, Pakistan, France and the United States of America. He finally submits that the Rule should be made absolute with a direction upon the respondents to implement the Project within a stipulated period.

The Rule is opposed. An Affidavit in Opposition is filed on behalf of respondent No. 6. The learned Assistant Attorney General, appearing on behalf of respondent No. 6, submits that the petitioner cannot claim any

right to implement the Project merely on the basis of the recommendation of the respondent No.2 or the order dated 24.05.2006. The learned Assistant Attorney General, referring to the order dated 02.06.1998 issued by the Prime Minister's Office, submits that medicines produced in Bangladesh cannot be imported and therefore, there is doubt as to whether the Project can be implemented in view of the said order. The learned Assistant Attorney General submits that the decision to implement the Project is a policy decision of the Government and therefore, this Division should not interfere. On these, among other counts, the learned Assistant Attorney General submits that the Rule should be discharged.

We have perused the writ petition, the Affidavit in Opposition and the documents annexed.

At the outset, we wish to point out that in our view, the issuance of the order dated 02.06.1998 does not necessarily mean that the Project cannot be implemented. The said order was issued in order to prevent import of medicines which are locally manufactured. It may so happen that the medicines to be imported by the Project entity are not manufactured in Bangladesh. It may so happen that the medicines may be manufactured in Bangladesh. In such cases, the order dated 02.06.1998 would have no relevance to the implementation of the Project. Furthermore, we note that the Government had issued preliminary approval to the Project after issuance of the order dated 02.06.1998. The Project, we understand, would be implemented through a Special Purpose Vehicle in which the Government would have stake. That being the position, the order dated 02.06.1998 could always be amended after consultation with the Hon'ble Prime Minister. We therefore disagree with the submission of the learned

Assistant Attorney General that in light of the order dated 02.06.1998, it would not be possible to implement the Project.

While we note from the documents annexed that the Government has approved the Project in principle, it is clear that many other issues associated with implementation of the Project have not been agreed upon by the Government. Unresolved issues include, the Government's investment if any and the extent, extent of foreign investment, the nature of the Special Purpose Vehicle, control of the Government in the Special Purpose Vehicle, profit sharing, revenue sharing etc. Many of the issues are commercial in nature. Direction from us to implement the Project, when many aspects of the Project are yet to be resolved, would be improper.

However, we note that the petitioner has been trying to implement the Project for a very long time. The petitioner raised the issues regarding the Project with different Ministries and Departments. The Government took the view that that the Project may be implemented and at certain point in time, even the Prime Minister's Office issued direction upon the Government authorities regarding the Project. The Government organizations were in direct contact with the petitioner. Therefore, the petitioner can legitimately expect that he would be informed about the progress. Since 2006 when the project proposal was sent to the Secretary, Ministry of Economic Relations Division, the petitioner has not been informed about the progress relating to implementation of the Project. This is certainly unacceptable. The petitioner may not have a right to implement the Project, but he certainly has a right to be informed about the implementation progress, if any. To enforce the aforesaid right, our intervention is necessary.

Thus, it is our considered view that the instant Rule should be disposed of with the following directions:

“ (a) The respondents are directed to inform the petitioner about the progress of implementation of the Project, preferably within a period of 2 (two) months but not later than 3(three) months from the date of receipt of the copy of the Judgment and Order.

(b) In the event the Government has decided not to implement the Project, the respondents are directed to inform the petitioner of the reason for the Government’s decision.

(c) In the event if the Government intends to implement the Project, the respondents are directed to inform the petitioner about the impediments which are delaying the implementation of the Project. The respondents are further directed to permit the petitioner to assist the Government in the implementation process, unless permitting the petitioner would contravene any law. In such a situation the petitioner must also be informed of the reason for refusing to allow his participation.

With the above direction, the Rule is disposed of without any order as to costs.

Communicate the Judgment and Order at once for immediate compliance.

Khizir Ahmed Choudhury, J:

I agree.