

**SUPREME COURT OF BANGALDESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 10660 of 2021

In the Matter of:

An application under Article 102(2) of the
Constitution of the People's Republic of
Bangladesh

-AND-

In the Matter of:

Munshi Mohiuddin Ahmed

.....Petitioner

-Vs-

Bangladesh, Represented by the Secretary,
Ministry of Education, Bangladesh Secretariat
Bhaban, Ramna, Dhaka-100 and others

.....Respondents

Mr. M. Shamsul Haque, Advocate

.....For the petitioner

Mr. A.B.M. Altaf Hossain, Advocate with

Mr. A.H.M. Anamul Haque, Advocate

.... For the respondent Nos. 2,3 and 4.

Heard on 10.05.2023 & 11.05 2023

Date of Judgment: 03.08.2023

Present:

Mr. Justice K. M. Kamrul Kader.

And

Mr. Justice Mohammad Showkat Ali Chowdhury.

Mohammad Showkat Ali Chowdhury, J: This Rule Nisi was issued on an application by the petitioner under Article 102(2) of the Constitution of the People's Republic of Bangladesh calling upon the respondents no. 2,3 & 4 to show cause as to why a direction shall not be given upon the respondents to pay demanded compensation amounting to TK. 30,00,000/- (thirty lakh taka) as claimed by the petitioner immediately and/or pass such other or further order or orders as to this court may seem fit and proper.

2. The short facts leading for disposal of this Rule are that the petitioner participated in the liberation war of Bangladesh when he was a student. His father was an active staff of temporarily constituted Mujibnagar Government of Bangladesh. After independence of Bangladesh, he returned to his study life and in course of time passed graduation and then got admitted in LL. B course with Shaheed Moshir Rahman Law College, Jashore, affiliated under the University of Rajshahi (hereinafter referred to as the University). Then he appeared in the LL. B examination in 1985 and the result of said examination was published on 06.4.1988. The petitioner searched the result sheet of the said LL. B examination but did not find his name and Roll number among the list of the successful candidates. The petitioner came to know from the office that he secured 24 marks in the second paper of LL. B (Final) examination and as such he failed in the said paper for shortage of one mark only.

3. It has further been stated in writ petition that the petitioner later on came to know that a gross anomaly was occurred in publishing the result and an enquiry Committee was formed in this regard by the University and the said Enquiry Committee after enquiry found that there was serious misconduct, carelessness and maltreatment committed in evaluating the answer scripts. The Academic Council of the University on 15.02.1988 suspended those concerned two examiners for 5 years and 12 years for their misconducts and carelessness and on 09.3.1988 it was approved by the syndicate meeting. Another Enquiry

Committee was formed to enquire into the matter and the Enquiry Committee found the same is true.

4. It is next stated that the petitioner thereafter immediately deposited requisite fees for re-examination of his answer script of second paper of LL. B course but the answer script of LL. B second paper of the petitioner was not re-examined and no result of the petitioner was re-published by the University. Then the petitioner on 26.05.1988 informed by a representation requesting the Controller of Examination of the University for re-examination of his answer script of the said paper but in vain. Then the petitioner was compelled to file a Title Suit No.233 of 1988 in the court of learned Assistant Judge, Sadar, Jashore, seeking inter alia that re-examination of his answer script in question. The respondent's no.2 and 4 as defendants contested the suit by filling written statement denying all material allegations made in the plaint. After trial, the learned Assistant Judge, Jashore (Additional Court) Sadar decreed the suit in favor of the petitioner on 19.8.1990 and decree was drawn up on 26.8.1990.

5. The above Respondents being aggrieved by and dissatisfied with the said impugned judgment and decree of the learned Assistant Judge(Additional Court) Sadar Jashore, preferred a Title Appeal No. 100 of 1991 before the learned District Judge, Jashore and on transfer the learned Additional District Judge, Jashore upon hearing the parties and perusing the record of the court below as well as the record of the said Appeal was pleased to dismiss the appeal and affirmed the judgment and decree dated 19.8.1990 passed by the learned Assistant Judge(

Additional Court) Sadar by his judgment and decree dated 28.02.1993(degree drawn up and signed on 07.03.1993).

6. It is also stated in the writ petition that the respondents being aggrieved by and dissatisfied with the impugned judgment and decree dated 28.02.1993 (degree was drawn up on 07.03.1993) passed by the learned Additional District Judge, Jashore, in Title Appeal No.100 of 1991 preferred a Civil Revision being No. 3372 of 1993 before the Hon'ble High Court Division which was heard by a single Bench of the Honorable High Court Division presided by his lordship Mr. Justice A.B. M. Khairul Haque and after hearing on 08.08.1999 his Lordship was pleased to discharge the Rule by affirming the judgment and decree of the Courts below and awarded costs in favor of the petitioner for prolong litigation.

7. It is next stated that the Respondents being defeated in all courts finding no other alternative were compelled to re-examine the said answer script of the petitioner and re-published the result of the petitioner on 29.03.2001 in the affirmative that the petitioner passed the LL. B Examination. But long 14 years have gone from his life and the petitioner became disappointed to be engaged in any Government job or choose his career as per his desire, although he became enrolled as an Advocate and in a belated stage he joined in the District Bar Association, Jashore on 21.07.2004 having certificate on 30.06.2004 but could not develop his practice due to elderly age and physical ailments.

8. It has been next averred in the writ petition that the petitioner felt in disastrous condition with children and two other dependent

brothers those who are blind and incapable to earn their livelihood. Along with the suffering of his youngest son, who is epilepsy and neurological patient and taking all this agony and tension the petitioner vigorously was attacked by brain stroke coupled with paralysis and such other physical and mental ailments compelling him to be completely bed ridden and till now he is fighting with those diseases, being admitted in the center for rehabilitation of paralysis (CRP), Mirpur, Dhaka.

9. It is further averred in the petition that the Respondents lost in every Court and they have no leg to stand legally. The University deposited Tk. only 224/ (taka two hundred and twenty-four) as the amount of costs of prolong litigation through Chalan dated on 08.01.2003 in favor of the petitioner which is so poor against his long seventeen years legal fighting. In the meantime, his valuable youthful tenure became ruined. If the said golden age of the petitioner could have to be properly utilized, he could be a good lawyer but all in vain due to careless activities of the Respondents as well as the authority of the University. The petitioner on several occasions sent reminders one after another for compensation but in vain. Then on 23.08.2020 he sent a legal notice through his engaged lawyer Mohammad Saiful Islam, the learned Advocate of the Supreme Court of Bangladesh for demanding justice claiming 30(Thirty) lacs taka as to be paid as compensation by the respondents in favor of the petitioner. But the Respondents did not pay heed to the said legal notice.

10. It has also been averred in petition that the Respondents were the cause of the serious mental and physical sufferings of the petitioner

and they are legally bound to pay to the petitioner compensations as demanded by the petitioner.

11. It is further stated in the petition that the petitioner sent a letter on 05.10.2019 addressing Registrar, the University claiming costs and compensation and in response to that letter, the Respondents replied that the awarded cost has already been paid on 03.5.2003 but the petitioner was not informed about the payment of the said cost in 2003. The respondents played a game with the petitioner for long 30-35 years in different ways ignoring his legal rights and difficulties created by them. The petitioner on 05. 11.2019, 08.02.2020, 18. 03. 2020, 02.07. 2020 and lastly on 27.07.2020 sent several reminders to the respondents but they did not give any reply to the petitioner even and neither any compensation was paid to the petitioner nor informed him what happened to the fate of the prayers of the petitioner for compensation and therefore, a direction may be given upon the Respondents to pay the compensation as claimed by the petitioner.

12. It is next stated in the petition that the petitioner is on bed due to his paralysis, he could not take appropriate steps to file this writ petition in due course of time, though the petition was drafted and prepared by his lawyer but pandemic situation of Corona Virus became a hindrance to move the writ petition before the High Court Division in due course of time.

13. The petitioner being dissatisfied with the activities of the Respondents in payment of compensation of the petitioner and there

being no alternative equally efficacious remedy, the petitioner moved the writ petition and obtained the present Rule Nisi.

14. The petitioner submitted supplementary affidavit dated 09.01.2023 and averred in the affidavit that the petitioner being disappointed to be engaged in any government services or choose his carrier as per his desire therefore the petitioner was constrained to send a legal notice through his learned lawyer A.Z.M. Feroz Advocate, Jessore Judge Court on 22-6-2002 demanding compensation of Tk. 10,00,000/- (ten lacs) from the Respondents and upon receiving the said notice, the Respondents replied on 21.07.2002 stating that they will take necessary steps as soon as they received the copy of the Judgment passed by the Hon'ble Court. Due to his physical and mental disablement, the petitioner could not pursue his claim from the respondents for last couple of years. In support of physical ailments of the petitioner all the medical papers have been annexed with the petitions. Subsequently, the petitioner sent several letters to the Registrar of the University on 05-10-2019, 05-11-2019, 08-2-2020 and 18-3-20 claiming the compensations and copy of those letters were also sent to the secretary of the Ministry of Education and the Chairman of the University Grant Commission including others. Thereafter, the Ministry of Education wrote to the respondents on 28-6-20 to take necessary steps for the petitioner's compensations and the respondents on reply of that letter informed to the Ministry of Education on 13-8-20 that costs of the suit already been paid to Jessore Court on 03-5-2003. Lastly, the petitioner claiming his compensation again sent another letter to the Vice Chancellor of the

University on 22-7-2020 referring the earlier letters and on 18-3-2020 to the Registrar of the University and a copy of the said letter was also sent to the Secretary Ministry of Education and Chairman, University Grant Commission including others. It is further stated that in spite of such repeated requests and approaches the respondents kept mum and finding no other alternative efficacious remedy the petitioner was constrained to send a notice demanding justice on 23-8-2020 through his learned lawyer to the respondents claiming compensation of Tk. 30,00,000 (Thirty Lac) but even after receiving the said notice the respondents did not respond to the petitioner's claim and therefore, the petitioner was compelled to file this Writ Petition.

15. The respondents No.2, 3 & 4 entered appearance by filing affidavit in opposition dated 09.01.2023, wherein, it has been stated that after receiving the judgment of Civil Revision No. 3372 of 1993, the University decided to prefer an appeal before the Hon'ble Appellate Division but the concerned Legal Advisor of the University opined not to prefer an appeal on 07-11-2000 and it was placed before the meeting of Syndicate of the University and in its 363rd meeting held on 21-12-2000 decided to publish the result of LL.B final examination of the petitioner in view of the judgment and order of the Hon'ble High Court Division and the University after observing the mandatory requirements published the result on 29-03-2001. It is stated that in view of the judgment of the Hon'ble High Court Division there was no direction upon the University to pay any compensation to the petitioner in any way. It is further stated that as per the judgment of the High Court Division on 09-03-2003, the

University paid the costs although with interest by the prescribed Chalan. It is also further stated that the petitioner moved the instant writ petition and claiming compensation after approximately 20 years of complying the judgment of the Hon'ble High Court Division, and as such, the writ petition is not tenable in the eye of law. It is further stated that it is not clear in which standard the compensation was to be computed. So, it is a disputed question of fact, further there is no scale to determine the compensation of the instant matter in the writ jurisdiction. The claiming of compensation by the petitioner in the instant writ petition which is a tortuous matter and civil in nature that cannot be determined by the Constitutional Court and as such, the instant writ petition is not maintainable.

16. The respondent Nos. 2,3 and 4 submitted an affidavit in reply dated 14.02.2023 against the supplementary affidavit of the petitioner wherein it has been stated that the submission made in paragraph 4 is vague, fictitious and unfounded as no fundamental rights of the petitioner has been infringed in this particular case. In a Writ Petition in the nature of mandamus, no compensation can be claimed but can get direction only for enforcement of legal right to redress for violation of such rights. It is further been stated that from plain reading of writ petition and supplementary affidavits filed by the petitioner which indicates that the University is vicariously liable for the malafide and negligent activities of its employees and other allegations and from the statement of the writ petition, it is clear that in no way the legal right guaranteed by the Constitution or any other law enforce in Bangladesh is

infringed by the University but the legal injuries and the claim of the petitioner is in civil nature as well as tortious, and thus, this Rule is not maintainable. After publication of the LL.B examination result, the petitioner enrolled with the Bangladesh Bar Council on 30-06-2004. After getting the certificate and before issuance of this Rule, there have been elapsed more than 20 years but there is no explanation why this writ petition has been filed after a long delay of 20 years. In Bangladesh law there is no period of limitation for filing the suit for tort as such Article 120 of the Limitation Act i.e., where there is no prescribed limitation, action can be brought within 06 (six) years from the date of occurrence.

17. The petitioner submitted Second supplementary affidavit dated 10.01.2023 wherein it has been stated that the Constitutional Court can determine an award the compensation for violation of fundamental rights guaranteed to its citizens under part-III of the Constitution and in the instant case the petitioner suffered damages and loss due to the gross negligence and careless activities in evaluating the answer scripts of the petitioner which caused violation of fundamental rights of the petitioner i.e. right to enter upon any lawful profession or occupation under Article 40 of our Constitution.

18. In the third supplementary affidavit dated 31.01.2023, the petitioner has stated that due to the negligence and careless activities of the respondents the petitioner could not apply to be enrolled with the Bar Council in due time and if the petitioner could do practice as lawyer or could engage in any service in due time could earn at least 15000/- per

month for the first five years i.e. 1990-1994 which would stand Tk. 9,00,000/- and for the next five years i.e. 1995-1999 he could earn at least 25,000/- per month which would stand Tk. 15,00,000/- and for the last five years 2000-2004, he could earn at least Tk. 35,000/- per month which would stand Tk. 21,00,000/-. More so, the petitioner would have been entitled to get benefit at least in total Tk. 5,00,0000/- (fifty lacs) from the Bar Association as well as from the Bar Council and in that case the total income of the petitioner for the said 15 years would have been (9,00,000/-+15,00,000/-+21,00,000/-+5,00,000/-) =total Tk. 50,00,000/-. It is further stated that it can safely be said that the petitioner has incurred a loss to the tune of taka 50-60 lacs from his profession only due to malafide activities and negligence of the University till then the petitioner claimed a lump amount of Tk. 30,00,000/- only, now the matter is rest in the hands and consideration of the Hon'ble Court to enhance or reduce the amount as the Hon'ble Court may seem fit and proper.

19. In the fourth supplementary affidavit dated 28.03.2023 of the petitioner, it has been stated that due to the negligence of the respondents undoubtedly the fundamental right of the petitioner i.e. right to enter upon any lawful profession or occupation in due course of time has been curtailed. So, it cannot be said that Article 40 of the Constitution has got no nexus. The original civil suit was not for compensation, but for mere declaration, so the question of res judicata does not arise. There had been several instances in Bangladesh, where employer was vicariously liable for the act of the employee in the course of business of the employer,

there is no need to adduce any oral evidences in this, in as much as evidences are already taken in civil suit and almost all the facts are admitted by the respondents and the civil suit went up to civil revisional jurisdiction and such other matters are already proved and admitted, so there is no necessity to adduce evidence. The High Court Division in writ Bench possess the wide power in respect of giving relief both in accordance with law and equity too. It is further stated that the allegation of the contesting respondents as to causes of delay in filing the instant writ petition have not been explained is not true. The respondents at belated stage deposited Tk. 224/- (two hundred twenty-four) as a cost of litigation but it is absolutely false and untrue that the petitioner received the costs. The University informed to the Ministry of Education that the petitioner received the amount of costs. It is also stated that for the sake of argument if the costs have been received in spite of that the petitioner shall not be deprived of getting compensation.

20. At the time of hearing Mr. M. Shamsul Haque, the learned counsel appearing on behalf of the petitioner upon taking us to the writ petition, 04(four) supplementary affidavits and that of the documents so appended therewith at the very outset has reiterated the facts of the case and contended that while the petitioner immediately deposited necessary fees for re-examination of his answer script, the respondents were legally duty bound to take steps for re-examination of the said answer script but did not take any step for re-examination, he also intimated the matter to the Controller of Examination of the University on 26-05-1988 but in vain. He has further contended that for the commission of gross anomaly

in publishing the result, an Enquiry Committee was formed and the said Committee after scrutiny found that there were serious misconduct, carelessness in evaluating answer script and maltreatment was committed in evaluating the answer scripts and rightly on 25-02-1988 suspended two examiners for five years and twelve years for their misconducts and carelessness and on 09-03-1988 it was approved by the syndicate meeting and the another Enquiry Committee also found the same allegation is true. He has argued that in such scenario, the University Authority very mysteriously remained reluctant and kept mum in not re-examining the second paper of LL. B final examination of the petitioner and also refrained from re-publishing the result. In this case, the University played a game of double standard. He contends that it is most funny and ridiculous that in spite knowing gross anomaly, carelessness and mal-treatment in the evaluating the answer script, how the University exposed gross and blatant negligence in not re-examining the disputed answer script though requisite fees for re- examination of answer script deposited by the petitioner.

21. He next submits that the University was compelled to finally re-publish the result by the order of the courts and the petitioner has been shown successful after long legal battle against the respondents. The respondents compelled the petitioner to involve in the legal battle against the respondents to have his legitimate claim but the petitioner incurred huge amount of money in payment of fees of advocates and other expenditures in the legal battle.

22. He further goes contending that from 1988 to 2001 long 14 years have been elapsed and the petitioner was disappointed to be engaged in any government services or to choose his lawful profession or occupation and that is why the petitioner was constrained to issue a legal notice through his lawyer demanding compensations and the respondents on 21-7-2002 replied that they will take necessary steps as soon as they receive the copy of the judgment passed by the Court.

23. It is further contended by Mr. M Shamsul Haque that for the willful blatant negligence, misconduct, reluctant attitude and arbitrary exercise of power and bad faith of the University, it slapped the grievances of the petitioner in not responding for re-examining of the disputed answer script and for that reason, the petitioner has been suffering from mental pressure and having finding no other alternative means to earn livelihood, the petitioner felt in a disastrous condition with his children and two other dependent brothers who are blind and incapable to earn the livelihoods along with the suffering of his youngest son, who is of epilepsy and neurological patient and taking all this mental agony and tension the petitioner vigorously was attacked by brain stroke coupled with paralysis and such other physical ailments compelling him to be completely bed ridden and till now he is fighting with those diseases, being admitted in center for rehabilitation center of CRP, Mirpur Dhaka. He has also contended that the respondents assured the petitioner that his claim will be met and having the assurance, the petitioner has been waiting and also for his physical condition for which

the respondents are responsible, he could not pursue his claim from the respondents for last couple of years.

24. The learned counsel for the petitioner further goes on to contend that the civil court is not the proper forum to redress the claim of compensation of the petitioner and the High Court Division is constitutionally empowered to give the compensation to the petitioner in the writ of mandamus. For that reason, the petitioner is entitled to have the adequate compensation from the respondents, since there is no other alternative equally efficacious remedy to have the compensation and Article 102 (2) of the Constitution of the People's Republic of Bangladesh is available to redress the grievances which occurs due to the violation of fundamental rights of the citizens enshrined under Articles 32 and 40 of the Constitution of the People's Republic of Bangladesh.

25. He next submits that the prayer made in the writ petition is not disputed question of fact and it requires no evidence and all the facts narrated by the petitioner in writ petition and four supplementary affidavits have not been specifically denied by the contesting respondents save and except demanding compensation and the other is maintainability of writ petition. He strongly argues that the question of limitation in filling the instant writ petition does not arise since the long passage of 32 to 35 years the respondents exposed unfairness and willful negligence is evident and it was sign of unbecoming behavior of the University and failed to obey legal and constitutional mandate and the petitioner has sufficiently explained the cause of delay and the University kept pending the claim of the petitioner that the University

will address the claim after having the order of the court but in the meantime he had been arrested by multiple diseases and claim of the petitioner must not be barred by limitation. He contends that due to the cause of the University the petitioner prevented from choosing his freedom of profession and right to life has been shattered for which the contesting respondents are legally bound to pay the compensations to the petitioner and the compensations can be calculated on the basis of the earning of a general lawyer of district court for last 12 years i.e., from 1990 to 2001. He has vigorously contended that the University is the cause of mental torture, agony and throwing him legal battle and knocked down him and snatching away the golden life of the petitioner. He candidly admits that compensation which are not calculable but if it is not possible that can be compensated by lump sum amount of money though said injury and loss is irreparable.

26. He last but not the least contends that this is not a case of violation of ordinary right under any ordinary law, rather it is a case of flagrant willful violation of the fundamental right i, e, freedom to choose profession or occupation and right to life and personal liberty which are guaranteed under Articles 40 and 32 of the Constitution of the People's Republic of Bangladesh respectively. He emphatically argues that since the Respondents has willfully, arbitrarily, intentionally and deliberately neglected and avoided to protect the fundamental rights of the petitioner, accordingly public law remedy is quite available to the petitioner to have compensation. In support of his contentions, he relied upon from the Indian jurisdiction the decisions in **the case of Rudul Shah Vs. State of**

Bihar (1983)(4), SCC 141=AIR 1983 SC 1086,3 SCR 508,Smt.Nilabati Behera Vs. State of Orissa 1993 2 SCC 746 as well as the case of DK Basu Vs. Union of India (1997) 1 SCC 416,case of Sumon Panigrahi Vs Board of Secondary Education, Odisha and another in W.P(C) No. 15465 of 2013 (High Court of ORISSA, Cuttack), date of judgment 04-9-2013 (unreported), and Rabindra Nath Ghosahal Vs University of Calcutta and others reported in AIR 1992 Cal 207 (1991) 2 CALLT 465 HC and contends that a writ petition to claim compensation is maintainable where it involves infraction of the fundamental rights of citizens.

27. To substantiate the above submission, the learned Counsel for the petitioner further relied upon a catena of decisions **from our jurisdiction, such as in the case of Children's Charity Bangladesh Foundation (CCB Foundation) in Writ Petition No. 12388 of 2014 5CLR (HCD)(2017)278, the State Vs Anti-Corruption Commission represented by its Chairman, Dhaka and others in Suo-Moto Rule no. 01/2019(unreported)** which are the authority in awarding compensation in a writ of mandamus if there is clear violation of fundamental rights.

28. Conversely, Mr. A. B. M Altaf Hossain along with Mr. A. H. M. Amanul Haque, learned Advocates appearing on behalf of the Respondents No. 2, 3 & 4 in their submissions have reiterated the grounds taken in the affidavits in opposition and reply in opposition and controverted the submissions of the learned Counsel of the petitioner and contended that at first, the writ petitioner has no legal and specific right

to enforce the performances of the duties of the Respondents and as such, the writ is not maintainable under Article 102(2) of the Constitution of the People's Republic of Bangladesh. He then submits that there has been no infringement of fundamental rights of the petitioner as guaranteed in the Constitution of Bangladesh.

29. He has further contended that the claim of compensation of the petitioner is a tortious matter and civil in nature and accordingly the petitioner has alternative efficacious remedy to redress his grievances before the Civil Court, as such, the Rule Nisi is liable to be discharged. He also contends that the claim of the petitioner is for compensation in the instant writ petition but it is a disputed question of facts which cannot be resolved by the Hon'ble High Court Division in the instant writ jurisdiction.

30. He next contends that the Hon'ble High Court Division in Civil Revision No.3372 of 1993 did not give any direction to the University to pay any compensation to the petitioner in any way. As per the judgment of the Hon'ble High Court Division on 09.03. 2003 in the above mentioned Civil Revision the University paid the costs with interest by the prescribed form of Chalan and the petitioner accepted the said costs. So, the petitioner is debarred from praying for compensation from the University.

31. He further contends that the petitioner moved the instant writ petition and claiming compensation after near about 20 years of complying the judgment of the High Court Division, as such, the writ petition is not tenable in the eye of law.

32. Mr. A.B. M Altaf Hossain, learned Counsel for the contesting Respondents wrapped- up his submission by arguing that there is no limitation prescribed under law of Tort, as such, Article 120 of the Limitation Act is applicable, i.e., action is to be brought within 06(six) years from the date of occurrence and further contended that while exercising the power in writ jurisdiction under Article 102 (2) of the Constitution, the High Court Division is a Court of law and not of equity and also cannot pass any order for ends of justice, as such, the Rule Nisi is liable to be discharged.

33. In order to have decision in favor of the contesting respondents, Mr. Hossain has referred a bundle of the decisions of our Honorable Apex Court of Bangladesh and decisions of foreign jurisdictions, those are; the **case of Hazerullah Vs. Assistant Commissioner, Board of Management of Abandoned Property, 55 DLR (AD)15, Talekhal Progressive Fisherman Vs Cooperative Society Ltd. Vs. Bangladesh and Others, 1 BLD(AD)103, case of Queen Vs Guardians of the Lewisham Union, 1897, 1.Q.B. 498, case of Bangladesh Beverage Industries Ltd. Vs. Rowshan Akhter and others 62 DLR 483, Murtuza Shah (Md.) and Ors. Vs. Ataharul Haque and Ors, 72 DLR(AD),231, case of Md. Nurul Hoque and Ors Vs. Secretary, Ministry of Communications, Railway Division and Ors, 51 DLR (AD), 140.**

34. Mr. Sheikh Saifuzzaman, the learned Deputy Attorney General appearing on behalf of the State opposes the Rule Nisi and, in his

submission, he has adopted the submissions of the learned Advocate of the Respondents No. 2, 3 & 4.

35. From the rival contentions of the contending parties to the instant writ petition 09 (nine) issues/questions emerged and those fall for consideration and adjudication by this court are as follows;

(1) Whether the petitioner has legal right for claiming such performance apart from the fact that he is interested in the performance of such duty in giving compensation?

(2) Whether the instant Writ petition is maintainable under Article 102 of the Constitution of the People's Republic of Bangladesh?

(3) Whether the petitioner has other equally efficacious remedy provided by law to redress for his grievances?

(4) Whether the University is vicariously liable for the infringement of fundamental rights of the petitioner and if not what kind of liability University incurs?

(5) Whether the University paid compensation for the claim demanded by the petitioner in the instant writ petition?

(6) Is this writ petition under Article 102 of the Constitution barred by limitation?

(7) Whether the Constitutional Court can grant compensation for violation of fundamental rights under Article 102 of the Constitution of Bangladesh in the writ of mandamus?

(8) Is there any scale to determine and measures the compensation of the matter in this writ jurisdiction?

(9) What amount of money as compensation should be paid to the petitioner by the respondents if the petitioner is entitled to have compensation?

36. We have heard the learned Counsels for the both sides and also have paid our anxious consideration to the submissions advanced by the learned Counsels of the contending parties and further have gone through the writ petition, four supplementary affidavits and all its annexure thereto and that of the affidavit in opposition and opposition in reply filed by the respondents No.2, 3 & 4 and the documents so annexed. In order to address the instant Rule Nisi, the issues/questions raised above are discussed one after another herein below;

37. The **first issue/question** is whether the petitioner has legal right for claiming such performance apart from the fact that he is interested in the performance of such duty in giving compensation.

38. In order address the above **first issue/question**, we are examining the said issue/question in the light of the facts, law and precedents from various jurisdictions including Bangladesh. The learned counsel for the contesting respondents in submission strongly claims that the petitioner has no legal right to enforce his claim and consequently, the University has no legal duty to perform the obligation towards the petitioner. As per his submission, without showing his legal right, he cannot pray for the performance of any public duty in the writ of

mandamus. In support of his contention, he has referred the decision in the **case of Talekhal Progressive Fisherman Vs. Co-operative Society Ltd. Vs Bangladesh and others reported in 1 BLD (AD), 103**, wherein their Lordships observed, **“It is well settled that in order to entitle a person to ask for the performance of any public duty by mandamus, it is necessary to show that he has a legal right for claiming such performance apart from the fact that he is interested in the performance of such duty.”**

39. In this context, we like to traverse the dictionary meaning of “legal right” and also see what Jurisprudence speaks about the said term. In general word, “legal right” means that an action which is permitted by the law of the land is called “legal right” or the act which is recognized or protected by the State is called “legal right.” The definition of “legal right” is given by a good number of jurists. Salmond defines legal right, “it is an interest recognized and protected by a rule of right, it is an interest respect for which is a duty and disregard of which is a wrong.” Rudolf Von Jhering has defined the term, “legal right” by which means that right which is legally protected interest.

40. Pollock view about “legal right” is, right is freedom allowed and power conferred by law. According to Buckland, a “legal right” is an interest or an expectation guaranteed by law. Supreme Court of India interprets the definition of right in the **case of State of Rajasthan Vs Union of India, AIR (1977) SC 1361** wherein their lordships observed, **“In the strict sense, legal rights are correlatives of legal duties and**

are defined as interests whom the law protects by imposing corresponding duties on others.”

41. Pursuant to the above definitions and decision of our Apex Court in the case of **Talekhal Progressive Fisherman (Supra)**, it is obvious that an aggrieved person must show before the court in a writ of mandamus that he has a legal right for claiming such performance from the respondents. Let us now see whether as per the above principle the petitioner has been able to show that he has legal right to have compensation and the contesting respondents are under law duty bound to perform their duties. In order to appreciate the first issue/ question, we need to reiterate the facts of the case which are given very shortly in next paragraphs.

42. In the instant case, it is admitted that the petitioner's result of the 2nd paper of LL. B (Final) was published by the contesting respondents long after 14 years from the date of the first publication of the result at the instance of the order of the High Court Division. It is also admitted that the relevant delinquent examiners were debarred by the University from examining answer script for considerable periods for their negligence, malice, corruption and commission of anomaly in examining the answer scripts of LL. B (Final). It demonstrates peculiarity to us that the University did not take any steps for re-evaluating the 2nd paper of LL. B (Final) Examination of the petitioner without any point/reason. It is very clear from the fact that the petitioner has the legal right to have the result in due time and the University under law was duty bound to re-examine petitioner's paper where the petitioner

deposited requisite fees for that purpose and non-re-evaluating the answer script of the petitioner without any reason showed that the University is the king of Britain and adopted the maxim that the king can do no wrong. From the conduct and inaction of the University regarding the lawful and legitimate claim of re-evaluating of answer script of the petitioner, it reminds us that the University's attitude regarding non-re-examining disputed answer script of the petitioner without any reason is also like the quote of English poet William Cowper (1781-1800) who wrote, "I am Monarch of all I survey, my right there is none to dispute, from the Centre all round to the sea, I am lord of fowl and brute. O solitude where are the charms that sages have seen in thy face? Better dwell in the midst of alarms than reign in this horrible place." In a democratic sovereign country, like Bangladesh, the behavior and attitude of the University totally unexpected and does not carry any sense at all. Had this willful negligence found and committed to the victim in the U.S.A or in any Western Countries the victim/petitioner would have been compensated with damages in million dollars. It is further found from the material on record that the University did not bother for their anomaly and misconduct in examining LL. B final answer scripts though said scandals were widely published in the newspaper and without an ounce of material ground/reasons the University contested the suit before the Court of Assistant Judge where the University ungracefully made false statement in the written statement about the fate of the answer script of 2nd paper of LL. B final examination. It is very ridiculous that as per claim of the University the

answer scripts of disputed 2nd paper of LL. B final examination were sold out before the publication of the result which is gross violation of law and that is unheard in the history of public examination and the said court found that the relevant register does not speak that the said answer script was sold out and the University did not show any satisfactory explanation about the fate of the disputed answer script. **It appears from the judgement of the Title Suit No. 233 of 1990 that the learned Assistant Judge observed in the judgement, “the result of the LL. B examination was published on 06.04.1988 and how the answer script could be sold on 10.01.1988, 14.04.1988?”**It further appears from the judgment in Civil Revision No. 3372 of 1993 that his lordship Mr. Justice A.B.M Khairul Haque also observed, “the witness on behalf of the defendants admitted in his deposition that generally examination scripts are being sold out six months after the result is published but in the instant case how and why the said examination script was sold out even prior to the publication of the result on 06.4.1988.” From this situation, it suggests the University intentionally, deliberately and purposefully did not bring the disputed answer scripts before the court in order to suppress the facts and if those were produced the anomaly, bad faith and discrepancies in examining answer script would have been unveiled. As per section 114(g) of the Evidence Act, 1872 “Evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it.” So, adverse presumption must be drawn against the University about the merit of the 2nd paper of LL. B final examination. **To our utter surprise, it appears to us that**

the University did not take any action against the delinquents in vanishing the disputed answer scripts. This scenario shows that the University was involved in this episode. We feel sorry to mention here that the University without any ground preferred appeal to the learned District Judge and the said appeal eventually was transferred to the learned Additional District Judge where the University hopelessly lost and again the University went up to the Honorable High Court Division invoking revisional jurisdiction and again miserably lost and admittedly the University was thinking to file a petition for leave to appeal and ultimately dropped that idea and good sense prevailed at the advice of the legal adviser of the University but even after the direction of the Honorable High Court Division the University after one and half year re-published the result of the petitioner in the year of 2001 showing the petitioner passed the LL.B final examination and though result was first published on 06.04.1988. There has been a gap of 14 years between 1988 and 2001. In the meantime, normal life of the petitioner has been shattered and right to enter upon any lawful profession or occupation in due time has also been halted by the willful negligence and maltreatment of the University towards the petitioner.

43. We further observe that the matter is so simple that when an examinee deposits the requisite fees for re-evaluation of the disputed answer script and the University had no alternative other than re-evaluation of the said answer script as per rule. But the University kept mum. It is leaked out that there was gross anomaly, misconduct and corruption in publishing result and the news published in the newspaper.

Accordingly, the University rightly formed Enquiry Committee and the Committee found the allegation is true and second Enquiry Committee also found the same and the University fairly punished those examiners. This episode and action of the University is obligatory and praiseworthy. The petitioner made representation to the University but without result. Here million-dollar question raises that in such scenario then what else remains for the University in not re-evaluating answer script of the petitioner and why and for what reason, what purpose and also at whose instance the University did not pay heed to the legal representation of the petitioner. The further million-dollar question is- can any Institution/University sale/destroy or vanish disputed answer script of any examination before publication of the result? Why the University was so haste in destroying the answer script? By doing this, what signals were given to the people at large? There is clear bar in the University rule about destroying answer script within six months from the date of publication of the result but the University after getting the report of the Enquiry Committee about anomaly, misconduct and corruption destroyed those answer script so that no one can find what kind of corruption/ anomaly and misconduct has been committed in those answer script. Any man of prudence in this glove can ask what harm/obstacle/ legal bar remains if the University after re-evaluating the disputed answer script publishes the result. Nowhere in the affidavit in opposition, the contesting respondents stated any factual and lawful ground/point about the reasons for which the University could not re-evaluate the answer script and publish the result of the petitioner within

the span of 14 years. We have seen to our utter surprise that in such premises, the University having nil and lame ground shamelessly contested the suit up to the High Court Division and thereby pulling the petitioner down to the bed and finally ruined his bright life and for the bad conduct of the University the petitioner was deprived from his right to enter upon lawful profession or occupation in due time. From the above, what gives the impression to the people at large about the bad conduct of the University? In contesting the suits up to High Court Division what the University tried to establish against the petitioner? Our question is whether the University tried to establish that even if any mistake/corruption/maltreatment occurs in examination of the answer script the University even after depositing requisite fees by the petitioner as per University rule, the University has the exclusive and arbitrary right to examine and not to examine answer script and whatever they can do and undo and they can compel such examinee to file suit to incur huge monetary loss and harassment and humiliate him longer period and enjoy the prerogative and sovereign power like Monarch and at one point of time that examinee will give walk over in establishing his right and by showing this example other affected examinees if feel aggrieved about the fate of answer script then having this example will never pray for re-evaluation of his answer script and the University would be remained white like milk, whatever misdeeds commits to the students and all the black episode will be remained under the veil? Alas! the petitioner was compelled to bite the University like tortoise finding no other alternative. However, all these things done by the University with

ulterior motive and for collateral purpose and are the result of sheer and willful negligence of the University. The petitioner had to wait 14 years for his desired result and failed to enter upon lawful profession because of he crossed his age limit in government service and he also sustained monetary loss and mental agony, humiliation and harassment in the society and thereby he suffered mental agony, vigorously was attacked by brain stroke coupled with paralysis and compelling him to be bed ridden and his right to life and personal liberty has been shattered and also freedom of entering upon lawful profession and protection of right to life and personal liberty as enshrined in Articles 32 and 40 of the Constitution respectively has been grossly violated. It is the categorical assertion of the petitioner that it is a clear case of gross willful negligence of the contesting respondents as they owed a statutory duty to re-examine the disputed answer script of the petitioner after having the requisite fees. So, it appears to us that the University without any reason most illegally, willfully, arbitrarily paid no heed in re-examining answer script of the petitioner and thrown the petitioner to lead miserable life and created barricade in choosing lawful profession in due time, the University must be responsible for the consequences. Moreover, the University degraded the glorious image of the University and also undermined its status in the eyes of the public at large.

44. We further point out that in an action for negligence the aggrieved person under obligation to prove that the aggrieved person has legal right and the opposite party has legal duty in showing due care and attention to the aggrieved person which has been discussed in

foregoing paragraphs and in that case the other party defaulted to exercise his duty, the breach of such duty was the causa causans, i.e. the direct and proximate cause of the injury/damage complained of and the claimed injury/damage in respect of freedom profession or occupation and right to life and personal liberty is caused on account of this violation of obligation by the University. The University grossly violated its duty towards the petitioner which is very much patent and shock any sensible person. In such circumstances, we find that though the facts of **the case of Talekhal Progressive Fisherman Co-operative Society Ltd Vs. Bangladesh and Others, 1 BLD (AD), 103** are distinguishable to the instant case, in spite of that however, rather the decision in the above case comes to support the petitioner and contesting respondents in no way can get any benefit from the above case law. From the discussion narrated above, we are of the view that the petitioner successfully has been able to establish his legal right for claiming such performance of such duty by the respondents and accordingly the answer of the first question is decided in the affirmative.

45. The **second issue/question**, whether the instant Writ petition is maintainable under Article 102 of the Constitution of the People's Republic of Bangladesh? The learned Advocate for the contesting respondents raised the question of maintainability of the instant writ petition on the ground that the University is vicariously liable for the alleged violation of the fundamental rights of the petitioner and the petitioner's claim can be ventilated under private law, the claim of the petitioner is disputed question of fact, and can ask for relief before the

civil court, the University paid costs to the petitioner, the Constitutional Court as court of law cannot pass any order for ends of justice, the writ petition is barred by limitation, there is no scale to determine and measures the compensation claimed by the petitioner and the Constitutional Court cannot grant compensation for violation of fundamental rights in the writ of mandamus. Considering the above arguments, we framed separate questions on each point. The above questions/ point has interlinked with the other issues framed for disposal of this petition, that is why for convenience of discussion this question of maintainability should be solved after addressing the other issues/ questions.

46. The **third issue/question**, whether the petitioner has other equally efficacious remedy provided by law to redress for his grievances? The learned Advocate for the contesting respondents claims that the petitioner has other equally efficacious remedy provided by law for his grievances and the civil court is the proper forum for the petitioner. The facts of the instant case suggest that no other equally efficacious remedy is provided by law to redress the grievances of the petitioner but in the civil court the petitioner will not get equally efficacious remedy to his grievances and remedy in civil court cannot be said to be equally efficacious. It is to be noted that the alleged violation of the rights of the petitioner is not the violation of ordinary law; it is the violation of the fundamental right to life and personal liberty and also freedom of entering into lawful profession or occupation of citizen guaranteed in Article 32 and 40 under the Constitution respectively. In

civil court for redress of the grievances one needs to wait long time to get decree due to cumbersome and costly process of executing decrees in private law. In this regard **the case of Bangladesh Beverage Industries Ltd Vs. Rowshan Akhter reported in 62 DLR, 483; 69 DLR (AD) 196** is a glaring example of lengthy legal battle which lasted 25 years from trial court to the Hon'ble Appellate Division. Another tort claimant in private law can be referred by the **case of Begum Shamsun Nahar Vs. British American Tobacco Bangladesh, 66 DLR(AD) 80**, in which Begum Shamsun Nahar being claimant filed case in 2004 against her employer, a multinational company, for sexual harassment in her workplace and the same is under trial in spite of passing long years which by no sense be said the claimant got equally efficacious remedy. In the **case of Government of Bangladesh and others Vs. Nurul Amin and Others 67 DLR(AD) 352** their lordships in para 11 observed, "Claim of compensation in tort for the injury caused to the persons or property, it takes long time for a victim to get decree for damages or compensation through civil courts." So, we hold that in strict sense the petitioner has no equally efficacious remedy to redress his grievances as alleged in the writ petition.

47. Another point is raised by the learned counsel for the contesting respondents that the High Court Division is not court of equity and as a court of equity the High Court Division cannot grant any relief for ends of justice. The learned counsel of the contesting respondents by referring **the case of Government of Bangladesh and others Vs Zafar Brothers Limited reported in 69 DLR(AD) 52** argues

that while exercising the writ jurisdiction under Article 102 of the Constitution, the High Court Division is court of law and not a court of equity and it also cannot pass any order for ends of justice. We are in respectful agreement with the decision of the Apex Court but in the instant case issues be determined and orders can be passed under Article 102 of the Constitution and are not being passed for ends of justice and not as a court of equity but as a court of law, as such, the contesting respondents cannot get any sort of shelter from the above decision. Moreover, the facts of the above-mentioned case are distinguishable from the facts of the instant case. Consequently, the argument of the learned advocate of the contesting respondents falls through. We purposely have not framed any separate issue on the above point because this court will not pass any order as a court of equity.

48. The **fourth issue/question** is whether the University is vicariously liable for the infringement of fundamental rights of the petitioner and if not what kind of Liability University incurs. In order to address the above fourth question, we need to know what is meant by vicarious liability. The root definition of the term, tort, has been given in the famous book on “Law of Torts” by Clerk and Lindsell which runs as follows, “A tort may be described as a wrong independent of contract, for which the appropriate remedy is a common law action, Underhill amplifies this definition thus:

“A tort is an act or omission which is not authorized by law, and independently of contract infringes either-

(a) Some absolute right of another:

- (b) Some qualified right of another causing damage:
- (c) Some public right resulting in some substantial and particular damage to some person beyond that which is suffered by the public generally:
and gives rise to an action for damages at the suit of the injured person.”

In tort, vicarious liability is a legal rule that holds a person or company responsible for actions committed by others or by their employees. The doctrine of vicarious liability lies at the heart of all common law systems of tort. It represents not a tort, but a rule of responsibility which renders the defendant liable for the torts committed by another. The classic example is that of employer and employee; the employer is rendered strictly liable for the tort of his employees, provided that they are committed in the course of the tortfeasors' employment. Let us now see whether the University is vicariously liable? The answer would be “No” and why not the University is vicariously liable that would be clear from the extracts of facts narrated herein below;

After knowing the gross anomaly in examining the disputed examination of LL. B final course the petitioner deposited requisite fees for re-evaluating of his 2nd paper of LL. B and made representation to the University. As per rule, the moment the petitioner deposited requisite fees for re-examination of disputed answer script self-liability/strict liability started and be continued up to the end of the consequences and injury incurred by the petitioner for the whole episode from inaction of

the University in re-examining the disputed answer script to every episode like contesting in the suits up to the High Court Division and creating of collapsible gate in his freedom to choose his any lawful profession or occupation and poured hot water in his normal life thereby the university is exclusively and highly liable and under the principle of strict liability including maxim of *res ipsa loquiter* (the things speaks for itself) because no one other than the University itself did all hazards and misdeeds to the petitioner from the inaction of the University in re-evaluating disputed answer script and all the decision of the University about the matter of the representation of the petitioner, contesting before the court and publication of result after 14 years from the date of first publication have been approved by the syndicate of the University and that is why the question of the principle of vicarious liability of the University does not arise at all.

A Constitutional tort is the violation of citizen's fundamental rights by local body or government servant or employee. In this type of litigation, the Constitutional Courts apply the principles of tort law to hold the State authorities/local body responsible for infringement of fundamental rights or to impose limitations on their powers. The courts in most cases apply the doctrine of vicarious liability, strict liability, negligence and *res ipsa loquitur* in the matter of constitutional tort action.

We find that the claim of the petitioner for compensation for willful negligence in publishing LL. B (Final) result and the liability of the University is not tortious and civil matter and accordingly the

constitutional court has got jurisdiction to pass the appropriate order under the principle of public law to address grievances of the victim as it deems fit and necessary.

49. The **fifth issue/question** is whether the University paid compensation for the claim demanded by the petitioner in the instant writ petition?

From the instant writ petition it reveals that the Hon'ble High Court Division in civil revision made the Rule absolute with cost for prolong litigation. It is claimed by the University that the petitioner received the costs after payment of costs and as such, the petitioner cannot claim for compensation. The University never claimed that the university paid the compensation. On perusal of the Civil Revision No. 3372 of 1993, it appears from the judgment that costs were imposed upon the University for Prolong Litigation. But it is to be understood in this context that there is gulf of difference between costs and compensation. The costs are imposed in suit/case/appeal and revision and in other proceeding as per law. The University paid costs of Tk. 224/- (two hundred and twenty-four taka) for prolong litigation and this is not actual expenditure incurred by the petitioner for the suit from the Court of Assistant Judge to the Hon'ble High Court Division. The University has failed to show any single paper that the petitioner received the said costs. Compensation are money awarded to a person who incurred injury or loss for the negligence or unlawful conduct of another for which loss/injury occurred to the victim. Compensatory damages are awarded by the court for the injury incurred by the victim

for the violation of legal rights. To receive compensatory damages, the petitioner needs to prove that loss occurred and it was attributed to the opponent. So, it is patently clear that the learned Advocate for the contesting Respondents is misconceived and wrongly diluted the term “Costs” with “Compensation” and the distinction between “Costs” and “Compensation” is very clear in law. The record of the instant case speaks that as per direction of the Hon’ble High Court Division the University deposited “Costs” with Chalan. But that matter has not been communicated to the petitioner, and for that reason the petitioner had no occasion to withdraw that little amount of Tk. 224/00 (Two hundred and twenty-four). The Respondent failed to show any document that the matter of deposition of Tk. 224/00 was intimated to the petitioner. For the sake of argument if the petitioner withdrew that costs of TK. 224/ in spite of that the University would not be absolved from liability in paying Compensation to the petitioner if he is legally entitled to have the compensation. So, admittedly the University did not pay compensation to the petitioner for the economic loss occurred due to gross negligence and thereby caused the life of the petitioner miserable and knocked down him bed ridden and mechanically, pulled the petitioner by his nose for long years. **The case of Md. Nurul Haque and Ors. Vs Secretary, Ministry of Communications Railway Division and Others reported 51 DLR (AD),140** is distinguishable from the facts of the instant case and blowing hot and cold as contended by the learned Counsel of the respondents does not arise because the petitioner admittedly did not get compensation and costs also.

50. It is vehemently alleged by the contesting respondents as **sixth issue & question is** that the writ petition is barred by limitation. It is argued by the learned counsel for the contesting respondents that as there is no limitation prescribed under law of Tort, as such, Article 120 of the Limitation Act, i, e where there is no limitation, action can be brought within 06 (six) years from the date of occurrence is applicable. We observe that as per Article 120 of the Limitation Act, 1908, the above period of limitation of 06(six) years is applicable in case of suit but the instant case is filed before the Constitutional Court under Article 102 (2) of the Constitution and it can be safely said that the submission of the learned Advocate of the contesting respondents find no merit, it is true that petition for compensation/compensatory liability must be brought within reasonable time but the instant petition has been filed after long delay. In such landscape, now question arises whether the instant case be knocked down for filing petition after long delay?

51. In order to address the above **sixth issue/ question**, we need to mention that like Article 226 of the Constitution of India, there is no period of limitation prescribed by any law for filing the writ petition under Article 102 of our Constitution. This becomes significant as the Limitation Act, 1908 is not applicable to the petition under Article 102 of the Constitution. Ordinarily, writ petition should be filed within reasonable time. We need to say that this may be unreasonable to give an exact definition of the word reasonable. The reason varies in its decision pursuant to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the

reasonable time to be so much time as is necessary. What is reasonable time is to be determined in the facts and circumstances of each case. In the case of **Smt. Sudam Devi Vs. Commissioner & Others reported in AIR 1983 SC 653(1983) @ SCC** wherein the Apex Court of India observed,

“There is no period of limitation prescribed by any law for filing the writ petition under Article 226 of the Constitution. It is, in fact, doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and beyond doubt that no such period of limitation can be laid down either under the rules made by the High Court or by practice.

52. For every case, it would have to be decided on the facts and circumstances whether petitioner is guilty of laches that would have to be done without taking into account any specific period as period of limitation. There may be cases where every short delay may be fatal while there may be cases where even long delay may not be evidence of laches on the part of the petitioner.”

53. In the case of **Chennai Metropolitan Water Supply & Sewerage Board Vs T.T. Mural Babu 2014(4) SCC 108** the Apex Court of India held, as follows:

“A writ Court is required to weigh the explanation offered and acceptability of the same. The court should bear in mind that it is exercising an extraordinary jurisdiction. As a Constitutional Court, it has a duty to protect the rights of the citizens but simultaneously it is to keep

itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the list at a belated stage should be entertained or not.”

54. In the matter of **Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh And Another, CIVIL APPEAL NO.3647 of 2020**, where the appellant who was a licensed drug manufacturer, took the plea of a bonafide inadvertent printing error on the label, by stating “OXYTETRACYCLINE INJ. I.P. VET” in place of “OXYTETRACYCLINE HCL INJ. I.P. VET. It was pertinent to note that the products were not spurious, adulterated or misbranded.

The appellant through their show cause notice explained their stance to their respondents which the latter rejected and further went on to blacklist the appellants through an impugned order. It was alleged that the impugned order for blacklisting contained no specific time duration and even after the appellants seeking clarification on the same, the respondents did not pay heed to it. In light of these circumstances, the appellants filed a writ petition.

The court after viewing the blacklisting order held it is illegal on various grounds, one of them being it was arbitrarily passed which is against the principle of natural justice. The court opined, “An order of blacklisting operates to the prejudice of a commercial person not only in presenting but also puts a taint which attaches far beyond and may well spell the death knell of the organization/institution for all times to come described as a civil death. The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned an order of blacklisting beyond 03 years or maximum of 05 years was disproportionate.”

The court moved on to the matter of delay which was an approximate of 10 years to which the court opined that, “There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on ground of delay in approaching the court. But it was only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act *stricto sensu* does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened etc.

55. The Hon’ble High Court of Calcutta vide its order dated 10.11.2022 in **the matter of Green Fizz Beverages Private Limited Vs. State of West Bengal & Ors. in M.A.T. No. 1364 of 2022 with I.A. No. CAN 1 of 2022**, ordered to restore and hear the Writ petition filed after 3 ½ years finding that it is elementary principle that none stands to benefit by lodging an appeal or a petition belatedly. Unless there are material to show that owing to malafide intentions and with certain ulterior, the petition was belated filed. Moreover, there is no such allegation against the petitioner. Therefore, the writ petition should be heard and decided on merits rather being rejected on the ground of delay and latches.

56. We are of the view that the Constitutional Court should exercise its discretion while hearing a writ petition in which delay has been occurred in filing and discharging Rule on the ground of such delay should not be the golden rule and the court should exercise its judicial discretion after examining all pros and cons of the matter including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened etc. So, this court must examine whether explanation offered by the petitioner is justified or not.

57. Record reveals that it is not true that no explanation has been given by the petitioner in filing the writ petition at belated stage. Now we need to securitize whether the explanation offered by the petitioner in the instant case in filing writ petition in belated stage is acceptable and entertainable and whether the petitioner with malafide intention and ulterior motive filed the petition at belated stage. It appears from the material on record that due to negligence, maltreatment and misdeeds of the University the petitioner being disappointed to be engaged in any government services or to choose his any lawful profession as per his desire, therefore, the petitioner was constrained to send a legal notice through his learned lawyer A.Z.M. Feroz Advocate, Jessore Judge court on 22-6-2002 demanding compensation of Tk. 10 (ten) lacs from the Respondents and upon receiving the said notice the Respondents replied on 21-7-2002 stating that they will take necessary steps as soon as they receive the copy of the Judgment passed by the Hon'ble Court Division. The University took step in other words to say the University was compelled to publish the result of the petitioner but did not take any necessary steps and given impression to the petitioner that they will do the needful in payment of compensation. Although he was enrolled as an Advocate in a belated stage and he joined in the District Bar Association, Jashore on 21.07.2004 due to blatant negligence of the University having certificate as lawyer on 30.06.2004 could not develop his practice due to elderly age and physical ailments.

58. It reveals from the material on record that the petitioner offered satisfactory explanation about delay in filing petition in belated stage. He explained that he felt in disastrous condition with children and two other dependent brothers those who are blind and incapable to earn their livelihood. Along with the suffering of his youngest son, who is epilepsy and neurological patient and taking all this agony and tension the petitioner vigorously was attacked by brain stroke coupled with paralysis and such other physical and mental ailments compelling him to be completely bed ridden and till now he is fighting with those diseases, being admitted in the center for rehabilitation of paralysis (CRP),

Mirpur, Dhaka. In the meantime, due to his physical and mental disablement, the petitioner could not pursue his claim from the respondents for last couple of years because of his physical ailment. In support of physical ailments of the petitioner all the medical papers have been annexed with the petitions. Subsequently, the petitioner claiming the compensations sent several letters to the Registrar of the University on 05-10-2019, 05-11-2019, 08-2-2020 and 18-3-20 and copy of those letters was also sent to the secretary of the Ministry of Education and the Chairman of the University Grant Commission including others. Thereafter, the Ministry of Education wrote to the respondents on 28-6-20 to take necessary steps for the petitioner's compensations and the respondents on reply of that letter informed to the Ministry of Education on 13-8-20 that costs of the suit already been paid to Jessore Court on 03-5-2003. Lastly, the petitioner claiming his compensation again sent another letter to the Vice Chancellor of the University on 22-7-2020 referring the earlier letters and on 18-3-2020 to the Registrar of the University and a copy of the said letter was also sent to the Secretary Ministry of Education and Chairman, University Grant Commission including others. It is further stated that in spite of such repeated requests and approaches the respondents kept mum and finding no other alternative efficacious remedy the petitioner was constrained to send a notice demanding justice on 23-8-2020 through his learned lawyer to the respondent's claiming compensation of Tk. 30,00,000 (Thirty Lac) but even after receiving the said notice the respondents did not respond to the petitioner's claim. **It is averred in the petition that the petition was drafted and prepared by his lawyer but pandemic situation of Corona Virus became a hindrance to move the writ petition before the High Court Division in due course of time. Therefore, the petitioner was compelled to file this Writ Petition. We observe that having the hope from the University about addressing the claim of the petitioner he has been expecting to have monetary compensation thinking that since the University is the guardian of the student, he must get positive result but we think that how long a oppressed person can fight against strong and powerful Institution. The above**

explanation is supported by documents and the contesting respondents did not specifically deny the above grounds. There is no material on record to show that owing to mala fide intentions and with certain ulterior motive, the petition is filed at belated stage. Moreover, there is no such allegation against the Petitioner. The above explanation can be accepted on the principle of non-traverse. So, it appears to us that the explanation is satisfactory and there is valid ground in not filing writ petition within reasonable time. Consequently, we find that the argument of the learned Advocate of the contesting respondents about the instant writ petition is barred by limitation finds no oxygen to survive and accordingly the above issue/question is disposed of in the negative.

59. The **seventh issue/question** is whether the Constitutional Court can grant compensation for violation of fundamental rights under Article 102 of the Constitution of Bangladesh in the writ of mandamus? This issue/point is very crucial. Now the question is whether the matter of claim of compensation is a tortious matter and civil in nature or not that has been decided in the foregoing discussion. It has already been observed that due to the willful negligence of the contesting respondents the violation of fundamental right of the petitioner to choose to enter any lawful profession or occupation and right to life and personal liberty must be remedied by awarding compensation but the question is whether the Constitutional Court is empowered to grant compensation under Article 102 of our Constitution? We need to address the question posed above in the light of our Constitution and also from other jurisdiction and should go through the decisions of case laws of various jurisdictions including Bangladesh. In view of the above, we have examined relevant provisions of our Constitution and the Constitution of India and also Constitutions of other jurisdictions.

60. Upon plain reading of the relevant provision of the Constitution of Bangladesh and India, it appears that Article 102(1) read with Article 44 of the Constitution of Bangladesh and Article 32 of the

Constitution of India are quite similar in respect of power of the High Court Division of the Supreme Court of Bangladesh and the Supreme Court of India respectively for enforcement of fundamental rights for redressing remedy for infringement of fundamental rights committed by the government or statutory body. It has been revealed that Articles 32 and 226 of the Indian Constitution outlines the authority and power of the Supreme Court and High Courts of India respectively to issue whatever directions, orders or writs that may be appropriate in a given case for the enforcement of the duties of the government or statutory body.

61. The right to move the High Court Division pursuant to Article 102 (1) of our Constitution for the enforcement of fundamental rights is guaranteed under Article 44(1) of the Constitution of Bangladesh. It would be profitable to reproduce Article 102 (1) of our Constitution which runs as under;

“(1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution.

(2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law-

(a) On the application of any person aggrieved, make an order-

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do;”

62. From plain reading of Article 102 of the Constitution it appears that no express provision has been provided in the said Article in awarding compensation for violation of fundamental right. Though the provision of awarding compensation is not expressly provided as a remedy for infringement of the fundamental rights either in Article 102 (1), or in any other Articles of the Constitution, save and except in Article 42, which imposes obligation on the State to pay compensation only when interfering with a citizen’s right to property by way of nationalization, acquisition or requisition. The nature of awarding of relief to the victim has been left to the High Court Division according to the circumstances of a given case by exercising its plenary powers under Article 102 of the Constitution to give directions and orders as may be appropriate for the enforcement of fundamental rights. In the case of **Government of Bangladesh and others Vs Nurul Amin and others, reported 67 DLR (AD) 352** their lordships observed, “the power of High Court Division under Article 102(1) of the Constitution is not only injunctive in ambit but also remedial in scope to provide any relief against any infringement of fundamental right already committed which may include the power to award compensation in appropriate cases.”

63. The power to grant compensation or compensatory costs is not barred by any provision of the Constitution and any law of the land. We

have examined some important cases from various jurisdictions wherein the Constitutional Courts directed the respondents of those cases to give compensation to the victim of those cases for infringement of fundamental rights and the reference of those cases are mentioned hereinafter discussed.

64. The Privy Council in **the case of Maraja Vs Attorney General of Trinidad and Tobago (1978) 2 All ES 670** held that an order for monetary compensation by way of redress for contravention of the basic human rights and fundamental freedoms can be permitted even though it has not been expressly provided in section 6 of the Constitution of the Trinidad and Tobago. In this case **Lord Diplock held**, “The jurisdiction to make such an order is conferred on the High Court by para (a) of section 6(2) viz, jurisdiction to hear and determine any application made by any person in pursuance of sub- section (1) of this section. His Lordship finally observed, “the claim is not a claim in private law for damages for the tort of false imprisonment under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in Public Law for compensation for deprivation of liberty alone.”

65. In the Case of **Simpson Vs. Attorney General (Baigent’s Case) 1994 NZLR 667** the Court of Appeal of New-Zealand while dealing with the enforcement of the rights and freedoms as guaranteed by the Bill of rights for which no specific remedy was provided, having considered a catena of authorities from different jurisdictions observed, “the courts are not only to observe the Bill in the discharge of their own

duties but are able to grant appropriate and effective remedies where rights have been infringed”.

66. The Court of Appeal, New Zealand based upon the judgments of the Irish Courts and the Privy Council, referred to the principle of law enunciated in the case of *Nilabati Behera Vs. State of Orissa*, 1993(2) SCC 746 unanimously held regarding the grant of pecuniary compensation to the victim for the contravention of his rights guaranteed under the Bill of rights Act although there was no express provision to that effect in the Bill of rights.

67. In the **case of Byrnes Vs. Ireland (1972) IR 241, page 64** Walsh, J. while speaking about the Constitution of Ireland in respect of the rights of the citizens held, “Where the right is one guaranteed by the State, it is against the State that the remedy must be sought if there has been a failure to discharge the constitutional obligation imposed.”

68. In Indian jurisdiction in the case of *Rudul Shah Vs. State of Bihar* 1983 (4) SCC 141: AIR 1983 SC 1086 the power of the Indian Supreme Court was for the first time recognized to pay compensation for infringement of fundamental rights. The Supreme Court of India for the first time granted monetary compensation as a constitutional redress for infringement of fundamental rights. This case is also considered as landmark judgment in the jurisprudence of the concept of State liability. In this case while the court passed interim order of compensation by way of public law remedy for illegal detention for over 14 years after his acquittal from a conviction of murder while passing the judgment of the court **his lordship Chandrachud, C.J observed as under,**

“It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of fundamental rights. **“His Lordship further observed, “In these circumstances of the case the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip service to his fundamental right to liberty which the State Government has so grossly violated Article 21, which guarantees the right to life and liberty, will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation.”**

69. In the case of **Paschim Banga Khet Mazdoor Samity Vs State of West Bengal, AIR 1996 (S.C) 2426**, the Supreme Court of India observed, “In respect of deprivation of the constitution rights guaranteed under Part III of the Constitution the position is well settled that adequate compensation can be awarded by the court for such

violation by way of redress in proceeding under Article 32 and 226 of the constitution.”

70. In the case of **Rural Litigation and Entitlement Kendra Vs. The State of U.P. AIR 1991(S.C) 2216**, it was observed by the Indian Supreme Court that considering the facts circumstances of each case Supreme Court can assess compensation.

71. In the case of **M.C Mehta and another Vs. Union of India, reported in AIR 1987SC 1086** while disposing writ petition the Supreme Court of India observed that under Article 32(1), it is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case i.e. apart from issuing direction, it is empowered under Article 32 to forge new remedies and fashion new strategies designed to enforce the fundamental right. The court further held that under Article 32 is not only confined to preventive measures to injunct infringement of fundamental rights but also to includes remedial measures to entertain claims for damages for violation of fundamental rights to award compensation in appropriate cases.

72. In the case of **D.K Basu Vs. State 1997 SCC 416**, it has been held, “A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages are long-drawn and cumbersome judicial process. Monetary compensation for redressal by the court is, therefore useful and at times perhaps the only

effective remedy to apply balm to the wounds of the family members of the victim.”

73. In the **case of Khatri Vs State of Bihar reported in (1981) 1 SCC 627**, wherein his lordship Bhagwati, J made observation, “why should the court not to be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and liberty.”

74. In the **case of Bandhu Mukti Morcha and Union of India (1984) AIR 802** it has been held that the authority of the Supreme Court is not only injunctive in scope but also remedial in scope and provides relief against a gross violation of fundamental right already committed.

75. In the **case of Radhakanta Maji Vs. State of Orissa (2014)** observed that monetary compensation cannot be a substitution or alternative for right to life but it is given by the court by way of “palliative care.”

76. In the **case of Saint Bir Vs. State of Bihar (1982) 3 SCC 131**, the question of granting compensation to the victim of the lawlessness of the State was left open. In the **case of Veena Sethi Vs. State of Bihar (1982) 2 SCC** the Apex Court of India expressed the same views holding that the question of compensation would remain still open.

77. In the **case of Smt. Nilabati Behera Vs State of Orissa 1993(2) SCC 746** the court awarded compensation to the mother of the victim. In this case, the claim of compensation is founded on the principle of strict liability and it is distinct from and in addition to the

relief in private laws. It is built on the principle of strict liability for the violation of fundamental rights. Defense of sovereign immunity is laid down in Article 300 of the Indian Constitution but the said principle of sovereign immunity does not apply as a defense in public law although it can be applied in case of tort, i.e., private law. In this case, the demarcation between public law and private law compensation was chalked out by the court. The said demarcation is narrated herein under:

Public law compensation:

- (1) Based on the doctrine of strict liability;
- (2) The defence of sovereign immunity is inapplicable
- (3) It is an acknowledged redress for enforcement and safeguard of fundamental rights.

Private Law Compensation:

- (1) Based on the principle of vicarious liability;
- (2) The defence of sovereign immunity is applicable;
- (3) It is in the nature of damages recoverable at large and inclusive of damages for the loss of reputation.

78. In the **case of Suman Panigrahi Vs Board of Secondary Education, Odisha (Judgment delivered on 4 September, 2013) the High Court of Orissa: Cuttack, W.P. (C) No. 15465 of 2013**, the court held, the Board of Secondary Education, Odisha is liable to pay compensation to the petitioner for the wrong/ negligence committed by the examiner in awarding 06 marks instead of 89 marks in Mathematics paper for which the petitioner shall either lose one academic year or shall be deprived of getting a seat in a better college and suffering from

mental agony, humiliation and harassment for no fault of him. The court further goes to observe that in the case at hand, this court cannot lose sight of the fact that the career of a meritorious student is at stake. In view of the above, opposite party No. 1 Board of Secondary Education, Odisha is directed to pay a compensation of Rs. 300000/-(rupees three lakhs) to the petitioner within a period of eight weeks from today failing which the amount of compensation shall carry interest @ 9% per annum till payment. It is worthy to note that the judgment was delivered 10 years back.

79. In the **case of Rabindra Nath Goshal Vs. University of Calcutta and Others AIR 1992 Cal 207, (1991) 2 CALLT 465 HC**, the short facts as writ petitioner averred in the petition that petitioner Rabindra Nath Ghosal appeared in the M.A Examination in 1983, in Islamic History and Culture of the Calcutta University which was held in November, 1984. He appeared in the examination as private candidate, the result of this examination was published on 6th June, 1985 and petitioner's result remained incomplete. He made repeated enquires at the Enquiry Counter of the University and wrote to the Controller of Examination by registered post on 10th December, 1990 and also to the Vice Chancellor on 14th February, 1991. The case of the petitioner is that non-publication of his result for more than six years is unreasonable, arbitrary and capricious and such inordinate long delay offends all cannons of justice, natural or otherwise. After hearing both the parties, the High Court of Calcutta observed that it is an admitted position that there was a criminal delay in announcing the result of the petitioner by

six years one month and six days and the entire responsibility rests on the authorities of the Calcutta University. The court opined that the jurisdiction of the writ court is wide enough to give substantial relief to the petitioner and observed that a valuable life has been made to suffer harshly at the hands of the authorities of the Calcutta University by the sheer neglect of the authorities and directed the University of Calcutta and the Vice-Chancellor to pay to the writ petitioner a sum of Rs. 60,000/-(Rupees Sixty thousand) as monetary compensation and damages by way of consequential relief within January, 1992. The judgment was delivered on 18th November, 1991 and thirty-two years back the Rs. sixty thousand was not so small amount of money.

80. In the **case of Kumari Smt. Vs State of Tamil Nadu and others, AIR 1992 SC 2069** the Apex Court while overruling the decision of the Madras High Court observed that the writ jurisdiction under Article 226 of the Constitution of India can be invoked by the writ court for awarding compensation to a victim, who suffered due to negligence of the State or its functionaries. In that case, a six-year-old child had fallen down in an uncovered sewerage tank. The High Court had refused to entertain the claim of compensation in a writ petition under Article 226 of the Constitution, but the Hon'ble Supreme Court directed the State to pay compensation.

81. The Role of Public Law Compensation in remedying fundamental rights violations has been emerged in our jurisdiction. The purpose of public law compensation is to impose limitation on the activities of the public functionaries. Another striking feature or purpose

is to ensure rights and interest of the citizens are not only protected but also honoured.

82. In our jurisdiction in the **case of Bangladesh Vs. Ahmed Nazir (1975) 27 DLR(AD) 41** our Apex Court held that the constitution, however, does not stipulate the nature of relief which may be granted. It has been left to the High Court Division to fashion the relief according to the circumstances of the particular case.

83. The **case of Shah Azharuddin Ahmed Vs. Government of Bangladesh and others 1981 33 DLR (HCD) 171** is remarkable in which the petitioner was given early retirement from his job by Habibullah Khan, a former Minister in charge of the Ministry of Information without proper cause and due to personal grudge. The High Court Division awarded compensatory cost against Khan for exercising arbitrary power and bad faith. However, the Hon'ble Appellate Division on appeal knocked down the decision of the High Court Division on the ground that Mr. Khan had not been made party in the writ petition in which earlier court made some adverse observations where he was not made party and the Apex Court opined that such observation violated established principle of natural justice. But it is important to note that the Appellate Division agreed that the High Court Division is empowered to pass an award compensatory cost is no doubt as matter of its discretion but such discretion must be exercised judiciously and in accordance of law.

84. The **landmark case of Bilkis Akhter Vs. Bangladesh (1997) reported in 17 BLD (HCD) 395** can be referred to as introducing

public law compensation in Bangladesh. The observation in Habibullah Khan is influenced in the above Bilkis Akter Hossain case which is referred to as celebrated case in introducing public law compensation in our country. In the Judgment, it has been held that the High Court Division has got extraordinary and inherent jurisdiction to pass any order as it deems fit and proper and further observed that the court has the power to award simple cost of the case as well as monetary compensation considering the facts and circumstances of each case. However, making the Rule absolute in that case by the High Court Division were scrapped by the Appellate Division in 2012 while the **case of Government of Bangladesh and others Vs Nurul Amin and others (2015), 67 DLR (AD) 352** was disposed of. In that case the respondents made argument that the awarding of compensation should be set aside for two basic reasons: first the High Court Division is not competent to pass an order for payment of compensation or compensatory cost as the Constitution itself does not authorize the court to grant such compensation or compensatory cost and there is no such provisions in Article 102 of the Constitution; and, second, because the petitioners having not prayed for any cost or compensation and therefore, the Court erred in law in granting the relief of monetary compensation without such prayer. It is remarkable to note that the Appellate Division rejected the first argument but accepted the second argument. In rejecting the first argument the Hon'ble Appellate Division referring foreign jurisprudence opined that the High Court Division is competent to award compensation under Article 102 of the Constitution. In disposing the case of Nurul

Amin (Supra) the Appellate Division held, “The other provisions of the Constitution may also come to play a role in interpreting the Article 102 of the Constitution. The power of the High Court Division under Article 102 is very wide and is not fettered by any legal constraints in the enforcement of the fundamental rights in as much as the High Court Division powers to issue such directions and orders as may be appropriate for the enforcement of fundamental rights conferred by Part III of the Constitution. The Hon’ble Appellate Division further observed, “it is the constitutional obligation of the High Court Division to give directions, orders as may be appropriate for the enforcement of fundamental right. The power of High Court Division under Article 102(1) of the Constitution is not only injunctive in ambit but also remedial in scope to provide any relief against any breach of fundamental right already committed which may include the power to award compensation in appropriate cases. The Hon’ble Appellate Division cautioned that the violation must be gross and its magnitude must be such as to shock the conscience of the court and it would be gravely unjust to the person whose fundamental right was violated to require him to go to the civil court for claiming compensation.

85. In the **case of Rustom Ali Vs. the State, 2017 5CLR (AD) 154** the Appellate Division directed the Dhaka South City Corporation and Dhaka WASA to jointly pay 5 million BDT the family members of the victim.

86. In the **case of Children’s Charity Bangladesh Foundation (CCB Foundation) Vs. Bangladesh and Others reported in 5CLR**

(HCD (2017) 278, their lordships discussed certain ratios and held as follows:

“As observed earlier, the court while exercising jurisdiction under Article 102 of the Constitution can award monetary compensation against the state and its officials for its failure to safeguard the fundamental rights of the citizens of the country, but there is no set method to measure the damages cause in such situations. Quite often the courts have a difficult task in determining damages in various facts situations. The yardstick generally adopted for determining the compensation payable in a suit for damages are not applicable when a constitutional court determines the compensation for violation of the fundamental rights guaranteed to its citizens under Part III of the Constitution.” alternative efficacious remedy for the infringement of the rights of the petitioner.

87. In the **case of the State Vs. Anti-Corruption Commission represented by its Chairman in Sou-Moto Rule No. 01 of 2019 (Unreported)** wherein one of us was party to the judgment directed the respondent no.11 to pay TK. 15,00,000/- (fifteen lacs) to the victim Jahalam. In that case Jahalam was wrongly detained in jail custody for 06 years instead of real accused. It was the gross negligence of respondents.

88. Having regard to the facts and circumstances and considering the development new horizon of awarding public law compensation jurisprudence for infringement of fundamental rights by the negligence of the violator with reference to the experience in our jurisdiction, India,

the Court of Appeal in New Zealand, Ireland, Privy Council we are driven in holding that in appropriate case the High Court Division in exercising its jurisdiction under Article 102 of the Constitution is not only empowered to direct enforcement of fundamental rights but also is not debarred in awarding compensation or compensatory cost in appropriate cases for violating of fundamental rights. The violation must be gross and its magnitude must be such as to shock the conscience of the court.

89. In view of the culmination of all the above precedents is that the Constitutional Court in exercise of its constitutional jurisdiction, is empowered to award compensation in favour of the aggrieved person in case of infringement of fundamental rights guaranteed under the Constitution.

90. The case of Rudul Shah Vs State of Bihar AIR, 1983 SC 1086, the Case of Nilabati Behera Vs State of Orissa (1993) 2 SCC 746, Case of MC Mehta and another Vs Union of India, reported in AIR 1987 SC 1086 Case of Maharaja Vs Attorney General of Trinidad and Tobago(1978)2 AII ER 670 from Indian and other foreign jurisdiction and in our jurisdiction the case of Bilkis Akhter Vs Bangladesh and others reported in 17 BLD 395,CCB Foundation Vs Government of Bangladesh 5CLR page, 278 and so many cases are the reference wherein for violation of fundamental rights compensations were given to the victim/victims family. Since for violation of fundamental rights compensation have been awarded the jurisprudence of public law compensation emerged in various jurisdictions that is why no illegality,

we find to grant compensation to the petitioner for infringement of fundamental rights by way of mandamus to the petitioner as the Constitutional Court. The above-mentioned cases consistently laid down ratio that under the constitutional jurisdiction High court division under Article 102 of the Constitution in case of negligence of the wrongdoer for infringement of fundamental rights compensation can award to the aggrieved person.

91. It is relevant to mention here that the defense of sovereign immunity is provided under Article 300 of the Constitution of India even then the Supreme Court of India held that the principle of sovereign immunity will not be applicable in a case where the fundamental rights of a citizen are invaded. **In the Constitution of Bangladesh there is no corresponding Article like 300 of Indian Constitution.** In our Constitution there is provision in Article 146 where sovereign immunity has not been given. In view of that there is no restriction in awarding compensation to the aggrieved person under writ jurisdiction. So, the argument of the learned Advocate of the contesting respondents finds not soil to stand.

92. Now, it needs to be addressed the **eighth issue/question** is whether there is any scale to determine and measure the compensation of the instant case in this writ jurisdiction? In the case of **Bangladesh Beverage Industries Ltd. Vs. Rowshan Akhter (supra)** the High Court Division determined the principle of quantum of awarding of compensation wherein their Lordship observed inter alia that affection, pain, suffering, mental agony, physical incapability, and emotion are not

calculable and if the court is satisfied that plaintiff is entitled to any compensation that can be only in lump sum and not on calculation. In the case of the State Vs. Anti- Corruption Commission represented by its Chairman in Sou-Moto Rule No. 1 Of 2019 (Unreported) wherein one of us of this Division Bench was party to the judgment directed the respondent No.11 to pay TK. 1500000 (fifteen lacs) to Jahalam and that amount of money was determined in lump sum. In the case of CCB Foundation Vs. Government of Bangladesh (Supra) their lordships observed, ‘the instant case is one of such kind, which requires intervention by this court with the award of compensation, not on calculation but in lump sum.’”The petitioner may or may not quantify the amount of loss in the eyes of the Judge. The principle is that if the petitioner can quantify loss in that case the court can award damages according to justified account of loss incurred for the injury or damage sustained by the petitioner and if does not quantify the loss or injury in that case court can award damages or compensation in lump sum.

93. In the **case of Sri Mannath Nath Kuri Vs. Mvi Md. Mokhlesur Rahman reported in 22 DLR (SC) 51 at page 58** their lordships held, “Assessment of damages in such cases a case must, therefore necessarily be to some extent of rough and approximate nature based more or less on guess work.”

94. In the **case of Amaratunge Vs. Police Contables and Others reported SAARC Law Journal, Publication of SAARC Law**, it has been held by the Supreme Court of Sri Lanka that there was a grave, deliberate and unprovoked violation of the petitioner’s freedom of

Speech and Expression and a sum of Rs 50,000/, payable by the State, was awarded compensation to the petitioner interms of Article 4(d) and 126 (4) of the Constitution.

95. We have left the **second issue/question** undecided on the findings that the contesting respondents raised the question of maintainability of the instant writ petition on the ground that the University is vicariously liable for the alleged violation of the fundamental rights of the petitioner and the petitioner's claim can be ventilated under private law, the claim of the petitioner is disputed question of fact, and can ask for relief before the civil court, the University paid costs to the petitioner, the Constitutional Court as court of law cannot pass any order for ends of justice, the writ petition is barred by limitation, there is no scale to determine and measures the compensation claimed by the petitioner and the Constitutional Court cannot grant compensation for violation of fundamental rights in the writ of mandamus. We observed that after disposal of the other relevant issues/question **the second issue/question** be disposed of. We find that the above arguments have no merit and accordingly have been decided against the contesting respondents. In view of discussion made above, we are of the opinion that this writ petition is quite maintainable.

96. Admittedly, due to sheer and willful gross negligence and laches of the respondents, the career of the petitioner is marred and he was prevented from choosing his right to profession in due time and consequently he suffered from mental agony, shock, harassment and humiliation in the society and huge monetary loss. In the instant case we

find that the violation of fundamental right of the petitioner is gross and its magnitude such that it shocks conscience of this court. It is the violation of fundamental rights guaranteed under Article 32 and 40 of the Constitution.

97. The **ninth issue/question** is what amount of money as compensation should be paid to the petitioner by the contesting respondents? In order to address the above **issue/question**, we need to see the quantum of loss and damages incurred by the petitioner. In the foregoing discussion, we discussed the facts of the case and the level of willful negligence and maltreatment exposed by the contesting respondents to the petitioner and it reveals from the material on record that the petitioner incurred such loss, injury and damages which cannot be quantified but we also in the foregoing discussion observed that the compensation be paid in lump sum basis without any strict assessment or calculation. This may be contrasted with the principle of tort claim in private law before the civil court where compensation for any financial loss would have to be arithmetically assessed and justified on the basis of evidence led by both the parties. The petitioner claims that he deserves TK. 60,00000/-(sixty lac) compensation and ultimately claims TK. 30,00000/-(Thirty lac) as compensation. We refrain from awarding such amount of compensation considering the position that the University may have constrained of fund. Considering the pros and cons of the facts and financial constraint of the University, we opine that justice would be best served if we award a sum of Tk. 18,00000/- (Eighteen lac taka) as compensation to the petitioner, to our minds in

contrast with injury/loss incurred by the petitioner the said amount is less moderate but still it is some amount of balm to the injury sustained by the petitioner and visa vis we pass this deterrent order as penalty of folly of the contesting respondents for which no public authority dare in future to repeat any sort of negligence as committed by the University to the petitioner without any reason and provocation.

98. We have respect to all the Universities because best son of the soil used to come out from the Universities and they serve the country. We also studied in the University and now we are in this position. The teachers and officials of the Universities are respected by every quarter. Any sort of misbehaviors, maltreatment and malafide actions and bad faith towards the students by the University and unbecoming behavior shock the conscience of the people and the Court. We understand that the position and dignity of any University in no way should be degraded and hopeful that good sense may prevail in the mind of the University and the University will be guided by head but not by heart. We hope that the University will pay the above amount of compensation to the petitioner within the period fixed by this court and will not degrade the status and dignity of the University any further. The sooner the University pays the compensation to petitioner the better for the both. We further believe that the University will understand what the petitioner lost in his life due the willful negligence of the University and which never be compensated by money, however, such amount of compensation would serve a bit as balm on the wounds of the petitioner. We also believe that everything may fall through but justice shall prevail.

99. Considering the total struggle of the petitioner in his miserable life from the moment the publication of his LL. B final examination result and continuous fight against giant contesting respondents we intend to state in this judgment the example of Santiago, Main character of the famous book, titled, “The Old Man and the Sea” which is a short story novel by American author Ernest Hemingway, fetched him Nobel and Pulitzer Prize, and took his work to new height. The main theme of the Old Man and the sea, is that a man can be destroyed but never be defeated. Hemingway did not mean to write a story simply about a man and a fish; this heroic struggle was intended to portray every man and woman’s battle for meaning and success in their life against the devil. Santiago is brave, confident, cheerful, determined and optimistic, no letting anything in life rattle him. Even when he does not catch a single fish for eighty-four days, he refuses to be discouraged. Another theme is how perseverance and dignity can help one battle through struggles in life. The petitioner is the valiant freedom fighter.

100. From finding the legal battle of the petitioner in the instant case in establishing his legal and legitimate right, it appears to us that the petitioner portrayed the role of Santiago, the main character of the novel, “The old man and the Sea “in his miserable life that happened due to willful negligence, careless behavior, bad faith, vindictive and arbitrary colorable exercise of power and malicious attitude of the contesting Respondents towards the petitioner and ultimately came out successful in compelling the University in re-examining and re-publishing his LL.B result by courts intervention but in the meantime his golden youth,

desirable dream and right to choose his profession in due time was snatched away by the contesting Respondents and thereby violated fundamental rights of the petitioner guaranteed in our Constitution and the petitioner being valiant freedom fighter has courage to fight against the powerful Respondents to file writ petition for his compensation for the financial, physical and mental injury incurred for the period during 1990 to 2001 and being law abiding person still refrain from praying for compensation for the financial loss from 2002 to till today. He would be the Role Model and vanguard for the oppressed people.

101. The University admitted all the facts narrated mentioned above. To our mind, this case may be the only case in our jurisdiction wherein facts stated in the writ petition is highly undisputed. In many cases we experienced that the respondents/defendants have some excuses/ grounds but the University never raise any point/ground for their inaction/negligence/avoidance in meeting the representation of the petitioner. It may be the only example how the University destroy the life of the promising student by their whimsical and willful negligence and malafide behavior where an examination is a stepping-stone on career advancement of a student and the examination of LL. B examination is foundation stone which help a student to enter any lawful career especially for becoming a lawyer. It is patently clear that the matter of the petitioner is not disputed question of facts.

102. We need to know the nature of status and position of the Rajshahi University. We find that the said University is regulated by the Rajshahi University Act, 1973 and it is a public university. All the public

Universities are autonomous body and legally independent of the State. The public Universities are funded by the government. So, it is clear that Rajshahi University responsible to perform duty and in case breach of duty the direction for awarding compensation can be given in the form of mandamus.

103. It appears from the record that respondent No. 2 is the Vice Chancellor, respondent N. 3 is the Registrar and respondent No. 4 is the Controller of Examination of the University. The Rajshahi University is reconstituted and reorganized in accordance with the provision of the Rajshahi University Act, 1973. As per section 12(1) of the said Act, 1973 the Vice Chancellor, shall be a whole-time principal academic and executive officer of the University and shall be an ex-officio member and the Chairman of the Senate, the Syndicate, the Academic Council, the Selection Boards, the Committee for Advanced Studies and the Planning and Development Committee. As per section 12(2) it shall be the duty of the Vice Chancellor to see that this Act, the Statutes and the University Ordinances are faithfully observed, and he shall have all powers necessary for this purpose. Unfortunately, the University failed to perform duties in preventing maltreatment and non- responding to the grievances of the petitioner and accordingly we opine that all the responsibilities rest upon him because everything about the matter of the petitioner has been approved by the Syndicate. Respondents Nos. 3 and 4 in such situation had no vital and significant role. In the above premises, we hold that Respondent Nos.3 and 4 should not be directed to pay compensation.

(All underlines are supplied for Emphasis).

104. In view of the long line of discussions made above, we find that the Rule has merit.

105. In the result, the Rule is disposed of with the observation and direction made in the judgment and order, however without any order as to costs.

Order of the Court

106. The contesting respondent No. 2, the Vice Chancellor of the University is directed to pay a compensation of TK. 18,00,000/- (Eighteen lakhs) to the petitioner Munshi Mohiuddin Ahmed within a period of 02 (two) months from the date of receipt of the judgment and order failing which the amount of compensation shall carry interest @ 5% per annum till payment.

107. Office is directed to send a copy of the judgment and order to the concerned University at once.

Mohammad Showkat Ali Chowdhury, J

I agree

K. M Kamrul Kader, J.