THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No.18119 of 2017

IN THE MATTER OF :

An application under Article 102(a)(i)of the Constitution of the People's Republic of Bangladesh.

-And-

IN THE MATTER OF:

Fahriya Ferdous and another

…… Petitioners

-Versus-

Government of the People`s Republic of Bangladesh, represented by the Secretary, Ministry of Education, Bangladesh Secretariat, Ramna, Dhaka and others

…….Respondents

Mr. Aneek. R. Hoque, Advocate

…….for the petitioner

Mr. Dipayan Saha, Advocate

……for the respondent No. 3

Mr. Suprokash Datta, Advocate

……for the respondent No. 4

Heard on:15.01.2023,22.01.2023 & 12.02.2023

Judgment on : 16.02.2023

Present:

Ms. Justice Naima Haider
&
Mr. Justice Md. Khairul Alam

Naima Haider, J;

This public interest litigation has been filed by two Advocates of the Supreme Court of Bangladesh in light of a report dated 14.11.2017 published in the Daily Prothom Alo.

Rule Nisi was issued by this Division on 11.12.2017 in the following terms:

Let a Rule Nisi be issued calling upon the respondent Nos. 1 to 6 to show cause as to why the trend of asking to disclose marital status of a

candidate for admission in educational institutions should not be declared to be unconstitutional for being discriminatory and why they should not be directed to frame a meaningful guideline to regulate the disclosure of marital status of a unmarried rape survivor who became a mother due to the rape and/or pass such other or further order or orders as to this Court may seem fit and proper.

This writ petition concerns story of a rape victim as reported in Daily Prothom Alo on 14.11.2017. A girl was raped and as a consequence, she gave birth to a child in 2014. When the unfortunate incident took place, the victim was student of Class X. She gave birth during her SSC examination. She raised the child and completed her HSC and wanted to become a nurse. She applied for admission to Rajshahi Nursing College ("NRS"). The admission form had a question relating to her marital status. She declared she was unmarried. Subsequently NRS came to know of her child. NRS thereafter insisted that since she is the mother of a child, she cannot be considered as unmarried and accordingly she must state that she is স্বামী পরিত্যক্তা. The Principal of NRS informed that since during examination (which the petitioners understand to be physical examination) it transpired that the victim is a mother, she is to state that she is স্বামী পরিত্যক্তা.

The victim did not come before this Division. The petitioner did. Therefore, the first issue is whether the petitioners are aggrieved persons within the meaning of Article 102 of the Constitution.

Initially the term *"persons aggrieved/aggrieved persons"* was given a very narrow meaning. Thus for instance, James LJ in *Sidebotham ex parte re [(1880) LR 14 Ch D 458]* held: *"the applicant must be a man against whom the decision had been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something".* The narrow view was subsequently rejected in the case of *Attorney General of Gambia V N' Jie [1961 AC 617]* where Lord Denning held:

> *"...The words 'person aggrieved' are of wide important and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody... but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests..."*

In *R V Commissioner of Police of Metropolis ex parte Blackburn[(1968) 2 WLR893 (CA)]* Lord Denning in Court of Appeal held that a member of public could obtain mandamus to compel the police to enforce the law against the gambling clubs. Lord Diplock in the celebrated case of ***R V IRC (National Federation of Self-Employed and Small Business Limited) [(1982) AC 617]*** held:

> *"... It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public spirited taxpayer, were prevented by outdated technical rules of locus standi from brining matter to the attention of the court to vindicate the rule of law and get unlawful conduct stopped... It is not in my view, a sufficient answer to say that judicial review of actions of officers or departments of central government is*

unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards to efficacy and policy... they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge..."

Expanded meaning has also been attributed in different jurisdictions and it is unnecessary for us to go into details. However, we would wish to refer to the Judgment of Bhagwati J in the celebrated Judges' Appointment and Transfer case *[1981 Supp SCC 87]*. His Lordship held:

" It may therefore now be taken as well established that were a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons....This Court will readily respond even to a letter addressed by such individual acting pro bono publico. ...any member of the public having sufficient interest can maintain an

action of judicial redress for public inquiry arising from breach of public duty or from violation of some provisions of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional and legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the constitutional objectives..."

The Hon'ble Appellate Division in the case of ***Nasiruddin V Secretary, LGRD [(1991) 51 DLR (AD) 213]*** held that the expression "person aggrieved" means a person who even without being personally affected has sufficient interest in the matter in dispute. The Hon'ble Appellate Division passed other judgments on this issue. What seems to be the focal point is that in public interest litigation, the person before the High Court Division need not be personally aggrieved but must be one, who, on behalf of others aggrieved, on genuine ground(s) seeks remedy from this Division; the Court should be mindful of the intention of filing the writ petition and must ascertain whether there are any collateral motives for filing the writ petition in the name of others. But no doubt, it has been settled by our Hon'ble Appellate Division that in appropriate cases, aggrieved person need not be the one who is directly affected by the decision or inaction of the executive(s).

The petitioners before us are Advocates of Supreme Court of Bangladesh. They are regular practitioners. As Advocates, they have moral obligation, even if not duty in strict sense of the word, to bring to the attention of this Division about wrongs committed by executives

regarding which those affected directly, for cogent reasons, cannot seek redress. Once our attention is drawn to such a situation, it is our discretion whether to intervene.

Without any need for explanation, what is clear is that the petitioners have genuine interest in what has happened and what has happened gives rise to important question of law of public importance. Therefore, without any doubt, the petitioners have locus standi to file the instant writ petition.

Having dealt with that, the issue before us which is of public importance is whether, the executives or for that matter Parliament is at liberty to impose identity on a person which is different from his/her real identity.

Marriage, a legally and socially sanctioned union, usually between a man and a woman, that is regulated by laws, rules, customs, beliefs, and attitudes that prescribe the rights and duties of the partners and accords status to their offspring (if any). Marriage is preceded by certain formalities, which varies. When there is marriage, the common element is *"social recognition"* not only of the couple but also of the children.

Husband or স্বামী is the male partner in the marriage. Thus, if a girl is said to be with her husband, she is understood to be with her partner in marriage. Marriage is thus a condition precedent to someone becoming a husband or স্বামী.

“Father” on the other hand is a “male parent”. He need not be married to become a father. A male can become a father of the offspring under different situations. He may become a father while married or while “living as de facto partner” or because of rape.

What is therefore clear is that to become a father, a male does not need to marry. Similarly, a female can become mother without being married; thus for instance a female who is an unfortunate victim of rape can become mother without being married.

What concerns us is what happened to the victim. She was raped and as a result, she gave birth to a child. She was not married to begin with. She became a mother and the rapist is the father of the child but under no stretch of imagination, the victim and the abuser can be termed as “husband and wife”.

An Affidavit from the Staff Reporter of Prothom Alo was filed.

From Annexure-4 of the said Affidavit, it transpires that in order to seek admission, the female candidate would need to be unmarried. We are not inclined to go into reasonableness of this precondition for admission. However, what is clear from the pleadings is that at the time when the victim sought admission, she was unmarried but gave birth to a child, being raped. She declared herself to be unmarried. There was no misdeclaration. However, the authority, after coming to know that she has a child insisted that she declares herself as স্বামী পরিত্যক্তা. The authority is presupposing a marital status. The authority did not take account of

“what actually happened”; the respondents took account of extraneous considerations and in doing so, made a fundamental mistake conferring a marital status upon the victim. What the authority-respondents have done is to forcefully confer an identity/status on the victim which she does not otherwise possess. Such action on the part of the respondents is clearly unconstitutional.

There is another aspect that needs to be considered. It is the use of the word পরিত্যক্তা. The use of this word, alongside the word স্বামী means that the victim was abandoned by her husband. The use of the word পরিত্যক্তা is extremely demeaning to the victim and no doubt, undermines her reputation and casts social stigma. In our view, compelling the victim to identify herself as স্বামী পরিত্যক্তা is violative of her fundamental right.

Mr. Aneek R. Hoque, the learned Counsel for the petitioner draws our attention to the fact that what has happened is not an isolated event but rather a practice. Mr. Hoque submits that the practice is to compel survivors of rape victims to identify herself as স্বামী পরিত্যক্তা in admission forms of educational institutions. This practice, in our view is highly deplorable and is an affront to common sense. This practice undermines the dignity of rape victim and further torments her. When rape victim is forced to address her abuser as her স্বামী, we cannot imagine how she is affected mentally and if she, in order to seek admission, compelled to address herself as স্বামী পরিত্যক্তা she is stigmatized for life; she is casted with false and derogatory aspersion. This practice must stop.

The petitioners sought for a direction upon the respondents to frame a guideline to regulate the disclosure of marital status of rape survivors who became mothers due to rape.

Before we part with the Judgment, we wish to express our gratitude to the learned Counsel for the petitioners and also the petitioners for their co-operation in disposal of the instant Rule.

In light of our discussion aforesaid, we are inclined to make the Rule absolute in part. The concerned respondents are directed to take necessary steps to frame a guideline for regulating the disclosure of marital status of rape survivors who became mothers due to rape. The respondents are further directed to frame the guideline at the earliest.

With the aforesaid observation and directions, the instant Rule is made absolute in part without any order as to costs.

Communicate the Judgment and Order at once for immediate compliance.

Md. Khairul Alam, J.

I agree.