

Writ Petition No. 119 of 2015

Present:

Mr. Justice Md. Khasruzzaman
and
Mr. Justice Md. Khairul Alam

13.08.2023

Mr. Md. Kamrul Islam, Advocate with
Ms. Sanjida Khanam, Advocate
... For the Petitioner
Mr. Bepul Bagmar, DAG with
Mr. Mohammed Rezaul Hoque, AAG,
Mr. Md. Serajul Islam, AAG, and
Mr. Bahauddin Ahmed, AAG
.... For the Respondents

Today two applications filed by the petitioner have appeared in the daily cause for passing necessary orders.

One of the applications is for correction of cause title of the writ petition and in the said application, it is stated that the cause title of the writ petition particularly the address of respondent No. 9 was not written correctly. Accordingly, the petitioner filed this application for correction. It is stated in the application that the mistake was done inadvertently and for this the petitioner apologies before this Court.

The statements made in the application for correction are satisfactory. Accordingly, the application for correction is allowed. The office is directed to do needful.

Another application was filed for serving notice upon the respondent No. 9 by way of substitute service.

It is stated in the application that the foreign address of respondent No. 9 is not known to the petitioner and the petitioner has failed to collect the address of respondent No. 9 in abroad.

It appears from the Annexure- 2 series of the affidavit-in-compliance filed by the respondent No. 10 dated 21.06.2015 that respondent No. 10 was directed to submit compliance with regard to the present status of Tariq Rahman's staying abroad. In compliance respondent No. 10 stated that *"To gather information about the official and residential address of Mr. Tariq Rahman, his present visa status and recent whereabouts, Bangladesh High Commission in London officially approached the British Foreign and Commonwealth Office (FCO). In reply, FCO informed that under Data Protection Act, 1998, they are unable to share one's personal information without one's expressed consent."*

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Thus, the petitioner after sincere endeavour failed to collect the address of the respondent No. 9 in abroad.

It appears from the office note dated 02.08.2023 that the process server returned the notice without serving the same upon the respondent No. 9 since he is in abroad.

Considering the facts, it appears that the notice cannot be served in the ordinary way upon the respondent No. 9.

Accordingly, the application for serving notice upon the respondent no. 9 by way of substitute service is hereby allowed.

Thus, the office is directed to serve the notice upon the respondent No. 9 by affixing a copy of the same on the notice board of the Supreme Court of Bangladesh and also to serve the same on the outer door or some other conspicuous part of the corrected address of the house of the respondent No. 9 by a special messenger of this Court at the costs of the petitioner.

The office is further directed to give report after copying the said order.

The petitioner is directed to publish an advertisement in the daily newspaper circulated in Dhaka and to file a compliance petition.

The petitioner is also directed to file requisites as per Rules.

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Present:

**Mr. Justice Md. Khasruzzaman
and
Mr. Justice Md. Khairul Alam**

24.08.2023

Mr. A. J. Mohammad Ali, Advocate with
Mr. A.M. Mahbubub Uddin, Advocate
with
Mr. Md.Bodruddoza, Advocate with
Mr. Md. Ruhul Quddus, Advocate with
Mr. Kayser Kamal, Advocate
.....for the applicant.

Mr. Md. Kamrul Islam, Advocate
Mr. Md. Momtaz Uddin Fakir, Advocate
with
Mr. Md.Bashir Ahmed, Advocate with
Mr. Ramjan Ali Sikder, Advocate with
Ms. Sanjida Khanam, Advocate and
Mr. Imran Kabir, Advocate
.....For the Petitioner

Mr. Bepul Bagmar, DAG with
Mr. Mohammed Rezaul Hoque, AAG and
Mr. Md. Serajul Islam, AAG
.... For the Respondents

This is an application for
addition of party as respondent No. 13.

Mr. A. J. Mohammad Ali, the
learned Advocate along with Mr. A.
M. Mahbubub Uddin, Mr. Md.
Bodruddoza, Mr. Md. Ruhul Quddus,
Mr. Kayser Kamal, learned Advocates
for the proposed respondent by placing
the application has submitted that some
constitutional questions are involved

with this matter and as such one of
the Advocates of the Bar filed this
application to be added as respondent
No. 13. Accordingly, his presence is
required for proper adjudication of
this matter. By referring Order 1 rule
8 of the Code of Civil Procedure, Mr.
A. J. Mohammad Ali, the learned
Advocate further submits that though
the petitioner instituted this writ
petition for public interest, it's a
political matter wherein constitutional
issue is involved. If the proposed
applicant is added to the writ petition
as respondent, he will assist the Court
to come into a proper decision. He
also submits that the *Rule Nisi* was
issued in the year of 2015 and after
long elapse of time, it was fixed for
hearing with a view to putting the
political matter in the Court and the
allegations of the violation of articles
7 (a), 39 and 150 (2) of the
Constitution were raised against the
respondent No. 9, and these were
referred to the *Rule Nisi* issuing order

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and as such his presence is required to enable the court effectual and complete to adjudicate and settle the questions in this writ petition.

On the other hand, Mr. Md. Kamrul Islam, the learned Advocate along with Mr. Md. Momtaz Uddin Fakir, Mr. Md. Bashir Ahmed, Ms. Sanjida Khanam, the learned Advocates for the writ-petitioner has opposed the application. According to them the applicant is neither a necessary party nor a proper party, and no relief was sought for against him. The intention of the proposed respondent is to defend the respondent No. 9, Tariq Rahman, in the name of constitutional issue involved in this matter and it is a device of the proposed respondent to defend the respondent No. 9 who is a convicted and a fugitive person in the eye of law. Therefore, they have prayed for rejection of the said application.

Heard the learned Advocates for both the sides, perused the application

and other material documents on record.

It is stated in the application that the applicant is a citizen of this country as well as a learned Advocate of this Bar, and some constitutional questions are involved with this matter. By filing this application the applicant expresses his desire and interest to be added as respondent to the present writ petition. It is further stated that he is a necessary party, and for proper disposal of the subject his presence is required, and he will assist the Court to come to a correct decision if he is added.

However, it is to be noted that as per law, a necessary party is one whose presence is indispensable or against whom relief is sought for and without whom no effective order can be passed and a proper party is one in whose absence an effective order can be passed, but his presence is necessary for complete and final decision on question involved in the

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proceedings. Therefore, it is settled that no suit can be decided without anyone of the necessary parties.

In the public interest litigation case, when the petitioner is not in a position to provide all the necessary evidence or information, in that case the Court can appoint commission or direct the respondents to collect or provide information or bring their submissions on facts before the Court. In the present case, no such situation has arisen.

It appears that no relief was sought for against the present applicant and his presence is not necessary for disposal of the Rule. Therefore, the applicant is neither a necessary party nor a proper party as settled by our Apex Court.

Thus the application is rejected.

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Present:

**Mr. Justice Md. Khasruzzaman
and
Mr. Justice Md. Khairul Alam**

28.08.2023

Mr. Md. Qamrul Islam, with
Ms. Sanjida Khanam, Advocates
..For petitioner-applicant.
Mr. Bepul Bagmar, DAG with
Mr. Mohammed Rezaul Hoque, AAG and
Mr. Md. Serajul Islam, AAG and
Mr. Mohammad Mahafujur Rahman, AAG
..For Respondent Nos.1-4 and 10.
Mr. Khandaker Reza-e-Raquib, Advocate
...For Respondent No.6.
Mr. A. J. Mohammad Ali, with
Mr. A.M. Mahbubub Uddin, and
Mr. Md. Bodruddoza, and
Mr. Md. Ruhul Quddus, and
Mr. Kayser Kamal, Advocates
... Present in Court.

By filing an application the writ petitioner-applicant prays for a direction upon the respondent No. 6 to remove offensive utterance of respondent No. 9, Tariq Rahman, through Video or Audio Clips, Recordings, Telecasting, Transmission etc. from all electronics and social medias or from Online Platforms, and also to restrain all concerns from publishing such utterance of the respondent No. 9.

When the matter is taken up for hearing, Mr. Md. Ruhul Quddus, the learned Advocate appeared and informed this Court that against the rejection order for addition of party dated 24.08.2023 they filed appeal

before the Appellate Division. But he did not produce any order of the Appellate Division.

Mr. Md. Qamrul Islam, the learned Advocate along with Ms. Sanjida Khanam, the learned Advocate by placing this application submit that on 07.01.2015 at the time of issuance of the *Rule Nisi* an interim order was passed directing the respondent Nos. 1 and 2 to take necessary measures to prohibit all medias, i.e. Electronic Media, Print Media, Social Media etc. from publishing and broadcasting any statement of the respondent No. 9 until he remains a fugitive in the eye of law. But no such direction was passed upon the respondent No. 6, Bangladesh Telecommunication Regulatory Commission (BTRC), the controlling authority of all medias. Therefore, the same direction as passed in the Rule issuing order is required to be passed upon the respondent No.6.

It is stated in the application for direction that the respondent No. 9, Tariq Rahman, is a convict and fugitive, and being a fugitive he cannot be acknowledged by any person or authority. But violating the said settled principle of law, on 26th July 2023 in Facebook Verified Page

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a Video was uploaded and in a public meeting held on 28th July 2023 arrangements were made for transmitting the statement of the said convict fugitive Tariq Rahman.

It is further stated that the respondent No. 6, BTRC is the appropriate authority to monitor, supervise and regulate the social media, online platforms including YouTube, Facebook etc. But due to bonafide mistake and inadvertence, the petitioner did not seek any direction upon the respondent No. 6 earlier and in absence of any such direction, the BTRC has failed to prevent the said illegal activities of the respondent No. 9.

It is to be noted that on 24.08.2023 Mr. A.J. Mohammad Ali, learned Advocate moved an application for addition of party which was rejected, and on the same day Mr. Md. Qamrul Islam, the learned Advocate appearing for the writ petitioner by placing a supplementary affidavit prayed for the above direction upon the respondent No. 6 and also prayed to treat the writ petition as heard in part.

Considering the submissions of the learned Advocates and the statements made in the application, we find substance in the application.

Accordingly, the application for direction is allowed.

Thus, the respondent No. 6, Bangladesh Telecommunication Regulatory Commission (BTRC) is directed to remove offensive utterance of respondent No. 9, Tariq Rahman, through video or audio clips, recordings, telecasting, transmission etc. from all electronic and social medias or online platforms and also to restrain all concerns from publishing such utterance of respondent No. 9, Tariq Rahman, until he remains a fugitive in the eye of law.

Communicate the order.

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Present:

**Mr. Justice Md. Khasruzzaman
and
Mr. Justice Md. Khairul Alam**

28.08.2023

Mr. Md. Qamrul Islam, with
Ms. Sanjida Khanam, Advocates

...For writ Petitioner-applicant.

Mr. Bepul Bagmar, DAG with
Mr. Mohammed Rezaul Hoque, AAG and
Mr. Md. Serajul Islam, AAG and
Mr. Mohammad Mahafujur Rahman, AAG

..For Government-Respondents.

Mr. Khandaker Reza-e-Raquib, Advocate
...For Respondent No.6.

Mr. A. J. Mohammad Ali, with
Mr. A.M. Mahbubub Uddin, and
Mr. Md.Bodruddoza, and
Mr. Md. Ruhul Quddus, and
Mr. Kayser Kamal, Advocates

... Present in Court.

Today on 28.08.2023 after sitting of this Court at 10:30 a.m. the learned Advocates have mentioned their respective matter before the Court. After mentioning of their respective case, we started taking of the items of the daily cause list chronologically. Accordingly, serial No. 35 of the today's cause list i.e. the application for direction was taken up for hearing in presence of the learned Advocates for the writ petitioner-applicant, the

learned Deputy Attorney General and also the learned Advocates of the Bar and some of the learned Advocates who appeared earlier in this matter before this Bench on 24.08.2023 when the application for addition of party was placed.

After hearing, the said application for direction was allowed directing the respondent No. 6, Bangladesh Telecommunication Regulatory Commission (BTRC) to remove offensive utterance of the respondent No. 9, Tariq Rahman, through video or audio clips, recordings, telecasting, transmission etc. from all electronics and social medias or in online platforms and also to restrain all concern from publishing such utterance of the respondent No. 9, Tariq Rahman, until he remains a fugitive in the eye of law.

After passing the said order, Mr. A. J. Mohammad Ali, learned Senior Advocate along with Mr. A.M. Mahbubub Uddin, Mr. Md.

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Bodruddoza, Mr. Md. Ruhul Quddus and Mr. Kayser Kamal, learned Advocates of the Bar raised objection against the above order and expressed their no confidence against this Bench and also prayed for recalling the order.

It is to be noted that after passing the order in presence of the learned Advocates, such type of prayer is unheard of. Moreover, their application for addition of party was rejected on 24.08.2023. Admittedly, respondent No. 9 being a convict and fugitive they have no right to make any submission before the Court on behalf of the respondent No. 9 as per law. Besides, today on 28.08.2023 when the matter was taken up for hearing, Mr. Md. Ruhul Quddus appeared and informed us that against the rejection order dated 24.08.2023, they went to the Appellate Division but he failed to show any order of the Appellate Division before this Court.

Since in presence of the learned Advocates for both the sides the order

was passed and none of the learned Advocates of the Bar raised any objection or expressed their no confidence against this Bench before taking up the application for direction and passing of the said order on the same, there is no scope to make any such submission as placed by them subsequent to the order has been passed.

Accordingly, the submissions advanced by the learned Advocates of the Bar being subsequent to passing of the aforesaid order allowing the application for direction is misconceived and thus not acceptable in the eye of law.