

**2 SCOB [2015] AD 12**

**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Surendra Kumar Sinha**  
-Chief Justice.

**Ms. Justice Nazmun Ara Sultana**

**Mr. Justice Syed Mahmud Hossain**

CIVIL PETITION FOR LEAVE TO APPEAL NOs.342 and 327 of 2011  
(From the judgment and order dated 05.08.2010 passed by the High Court Division in Writ Petition No.8493 of 2006)

**Orascom Telecom Bangladesh Limited.**

.....**Petitioner.**

(In C.P.No.327/11

**The Chief Executive Officer, Grameen Phone Limited.**

.....**Petitioner.**

(In C.P.No.342/11

-Versus-

**Kalipada Mridha and others.**

.....**Respondents.**

(In both the petitions)

For the Petitioners.  
(In both the petitions.)

Mr. Asaduzzaman, Advocate, instructed by Mr.  
Syed Mahbubur Rhaman, Advocate-on-Record.

Respondents.  
(In both the petitions)

Not represented.

Date of Hearing.

The 11<sup>th</sup> May, 2015.

**Commercial Use of National Anthem:**

**There is no gainsaying the fact that each of the leave-petitioners has been charging revenue for playing the national anthem on the mobile phones. On consideration of the Rules, in general, we find that there is no scope for commercial use of the national anthem. Such commercial use of national anthem shows utter disrespect to the national anthem. ....(Para 16)**

**JUDGMENT**

**SYED MAHMUD HOSSAIN, J:**

1. Both the civil petitions for leave to appeal are directed against the judgment and order dated 05.08.2010 passed by a Division Bench of the High Court Division in Writ Petition No.8493 of 2010 making the Rule absolute with directions.

2. Both the petitions for leave to appeal arising out of the same judgment and order between the same parties and involving similar question of law and fact having been heard together are being disposed of by this single judgment.

3. The facts, leading to the filing of these civil petitions for leave to appeal, in brief, are:

The writ petition is premised on an advertisement published in a comic magazine named “Bicchu” dated 06.08.2006 which was circulated as a magazine of a national daily, “The Daily Jugantor”. The advertisement was published in the aforesaid magazine on 06.08.2006 for the subscribers of Grameen Phone, Bangla Link and Aktel (presently Robi) for the downloading of Ring Tone to be played in their respective mobile phones. The said advertisement contained an assortment of songs, both folk and modern in Bangla, Hindi and English to be played in the mobile phone of any individual subscriber as a Ring Tone captioned under the heading বাংলা সিনেমা, থিম, দেশাত্তবোধক, ফোর্নেটা, মিলিটারি, হিউমর BদেL etc. In the list of patriotic songs, the first item is the National Anthem of Bangladesh.

4. Upon publication of the aforesaid advertisement, the writ-petitioner, as a patriotic citizen of the country, issued a notice demanding justice on 17.08.2006 addressed to the concerned Ministries for withdrawal, cancellation, revocation of the advertisement, so far as it relates to the downloading of the National Anthem as a Ring Tone.

5. Being aggrieved by and dissatisfied with the failure of the writ-respondents to withdraw public offer published in the Daily Jugantor’s comic magazine ‘Bicchu’ dated 06.08.2006 so far as it relates to downloading option for the National Anthem of Bangladesh as Ringtone, the writ petitioner filed a writ petition before the High Court Division and obtained Rule Nisi in Writ Petition No.8493 of 2006.

6. The writ-respondent Nos.6 and 7 filed separate powers but no affidavit-in-opposition was filed controverting the material statements made in the writ petition.

7. The learned Judges of the High Court Division upon hearing both the sides by the judgment and order dated 05.08.2010 made the Rule absolute with directions Feeling aggrieved by and dissatisfied with the judgment and order of the High Court Division, proforma-respondent Nos.8 and 9 as the leave-petitioners have filed these civil petitions for leave to appeal before this Division.

8. Mr. Asaduzzaman, learned Advocate, appearing on behalf of the leave-petitioners of both the petitions, submits that the High Court Division committed illegality in observing that audacity demonstrated by proforma-respondent Nos.8, 9 and 10 warrants a punitive action and that on the basis of such finding passed a punitive order directing each of the leave-petitioners to pay Tk.50,000,00/- without giving it an opportunity of being heard and as such, the impugned judgment is liable to be set aside.

9. We have considered the submissions of the learned Advocate of the leave-petitioner of both the leave-petitions, perused the impugned judgment and the materials on record.

10. The Constitution of the People’s Republic of Bangladesh states about the national anthem in sub-article (1) of Article 4 which is quoted below:

“4(1) The national anthem of the Republic is the first ten lines of “Amar Sonar Bangla.”

Sub-article (4) of Article 4 provides as under:

“4(4) Subject to the foregoing clauses, provisions relating to the national anthem, flag and emblem shall be made by law.”

11. In accordance with the provisions of the Constitution, National Anthem Rules,1978 (in Short, the Rules) were promulgated with effect from 25.10.1978.

12. Schedule-1, Column-1 of the said Rules states the occasion, on which, national anthem is to be played. Schedule-1 states 20 occasions, on which, national anthem, are to be played. Of them, 18 occasions relate to State functions. Serials Nos.19 and 20 are two occasions, which are not State functions. Serial Nos.19 and 20 in Schedule-1, Column-1 are as follows:

“(19) At the beginning of the cinema shows and at the conclusion of the Television programmes.

(20) At the beginning and conclusion of the day’s programme of radio broadcast.”

13. In this connection, it is pertinent to quote Rule 5 of the Rules, which is as under:

“5. Singing of national anthem by civilians-(1). The national anthem may be sung on an occasion which, though not strictly ceremonial, is significant because of the presence of any Minister.

(2) In all schools, the day’s work shall begin with the singing of the national anthem.

(3) Whenever the national anthem is sung, the whole of it shall be sung.”

14. On consideration of the relevant provisions of National Anthem Rules,1978, it is explicitly clear that national anthem can be played only at the places and on the occasions specified in the said Rules. The restrictions so imposed have been done for protection and preservation and upholding the sanctity of the national anthem.

15. The national anthem is the nation’s cherished property. We protect the national anthem because it is an important song of national unity. Bangladeshis regard the national anthem with an almost mystical reverence regardless of what sort of social, political or philosophical beliefs they may have. Commercial use of national anthem amounts to its desecration.

16. There is no gainsaying the fact that each of the leave-petitioners has been charging revenue for playing the national anthem on the mobile phones. On consideration of the Rules, in general, we find that there is no scope for commercial use of the national anthem. Such commercial use of national anthem shows utter disrespect to the national anthem. Each of the petitioners herein should have refrained from commercial use of national anthem. In an open market economy, each of the leave-petitioners can promote its business but it can do so without offending any existing law of the country. Even China where free market economy is booming does not permit commercial use of its national anthem.

17. Mr. Asaduzzaman, learned Advocate of the leave-petitioners of both the petitions, submits that the impugned judgment was delivered without giving each of the petitioners an opportunity of being heard and as such, the impugned judgment should be set aside. It is of course true that the impugned judgment was passed behind the back of each of the leave-petitioners as no notice was served upon them. As soon as the leave-petitions were filed, each of leave-petitioners has the option to assail the judgment on merit.

18. Mr. Asaduzzaman, however, could not assail the impugned judgment on merit.

19. As such, the question of raising violation of natural justice does not arise at this stage.

20. We are of the view that the High Court Division was justified in making the Rule absolute. We are, however, of the opinion that the donation to be paid by each of the leave-petitioners should be reduced to Tk.30,000,00/- instead of Tk.50,00000/-.

21. Therefore, leave-petitioner, (Orascom Telecom Bangladesh Limited) of leave-petition No.342 shall donate Tk.30,00000/- (thirty lac) to the National Institute of Kidney Diseases and Hospital, Shere-E-Bangla Nagar, Dhaka.

22. Leave petitioner (The Chief Executive Officer, Grameen Phone Limited), shall donate Tk.30,00000/- (thirty lac) to the National Lever Foundation of Bangladesh, 150, Green Road, 2<sup>nd</sup> Floor, Panthapath, Dhaka.

23. The donations have to be paid as expeditiously as possible.

24. Accordingly, both the leave-petitions are disposed of with the above direction.