

Present:
 Mr. Justice Mohammad Bazlur Rahman
 and
 Mr. Justice Md. Ruhul Quddus

Writ Petition No.176 of 2012

Md. Siddiqur Rahman and others
 ...Petitioners

-Versus-

Government of the People's Republic of
 Bangladesh represented by the Secretary,
 Ministry of Liberation War Affairs and others
 ...Respondents

Syed Humayun Kabir Khadem, Advocate
 ... for the petitioners

Mr. J. K. Paul, Advocate
 ...for respondents 2-4

Mr. Goutam Kumar Roy, D.A.G. (with leave of
 the Court)
 ... for respondent 1

Judgment on 14.11.2012

Md. Ruhul Quddus, J:

This Rule was issued against stoppage of state honorarium of the writ petitioners and also for direction upon the respondents to pay them (petitioners) honorarium at the rate which they were receiving since January, 2003 with a further direction for enhancing the amount of honorarium/allowance.

It is contended in the writ petition that the petitioners (57 in number) are disable freedom fighters. Respondent 2 Bangladesh Muktiyoddha

Kalyan Trust (hereinafter called the Trust) took up a scheme for rehabilitation and assistance of the freedom fighters who were injured in the war of liberation by payment of state honorarium. The petitioners applied to the Trust at different times in between 1997-1998 for enlistment as disable freedom fighters. The authority after proper scrutiny found them genuine disable freedom fighters and started giving them state honorarium. The Trust without assigning any reason or giving them any opportunity of being heard abruptly stopped/reduced payment of state honorarium and allowance in mid-2003.

It is further contended that some of the petitioners are still getting the honorarium, amount of which is very negligible and inadequate, but under compelling circumstances they are receiving the same. However, the petitioners whose payments were stopped filed several applications to the Trust but without any result. The petitioners came to know that some other disable freedom fighters had filed Writ Petition No.2183 of 2004 against stoppage of state honorarium, which the High Court Division declared illegal and without lawful authority by judgment and order dated 7.6.2007. Against the said judgment, the Chairman of the Trust moved Civil Petition for Leave to Appeal No.1159 of 2007 before the Appellate Division, which was dismissed by judgment and order dated 23.3.2008 [Chairman, Bangladesh Freedom Fighters Welfare Trust and others Vs. Mominul Haque Bhuiyan and others reported in 14 BLC (AD), 41]. Being inspired by the said judgment, the petitioners moved in this Court with the instant

writ petition and obtained the Rule. In a supplementary affidavit the petitioners have annexed a judgment of the High Court Division passed in Writ Petition No.8636 of 2010 analogously disposed of with some other writ petitions contending, *inter alia*, that the present petitioners stand on same footing with the petitioners in those writ petitions.

The respondent-Trust filed an affidavit-in-opposition supported by a supplementary affidavit-in-opposition contending, *inter alia*, that the petitioners did not acquire any vested right to claim state honorarium at the previous rate. Their claims are not backed by The Bangladesh (Freedom Fighters) Welfare Foundation Order, 1972 (P. O. 94 of 1972) or Muktijodda Kalyan Trust (Welfare) Regulations, 1984 or any decision of the Trust. Some of the petitioners have been getting honorarium from July, 2003 according to a decision of the Ministry of Liberation War Affairs as contained in Memo No. মুঃবিঃমঃ/প্রঃ-১/বিবিধ-৩৪/২০০২-৩৭১ dated 28.10.2003. The Ministry took the decision on the basis of a recommendation made by *Juddhahata Muktijoddha Bachhai Committee* constituted under a notification of the Trust contained in Memo No. মুঃবিঃমঃ/ বিবিধ-৩৪/ প্রঃ-১/ ০২ dated 31.3.2002. The aforesaid memo dated 28.10.2003 is not challenged in the instant writ petition and without challenging the same, the petitioners cannot pray for any relief, which is not provided therein. Although petitioner 1 was getting state honorarium, it was stopped as he failed to produce any evidence supporting his claim of injury during the war of liberation. However, the Trust admitted that he had lost his left leg up to

knee on 16.12.1971 (paragraph 2 of the supplementary affidavit-in-opposition). Petitioners 18 and 19 have been getting honorarium since 1999, while petitioners 2, 3, 5-12, 14-17, 20-28 and 30-57 have been getting since July, 2003. But petitioners 4, 13 and 29 are not enlisted as disabled freedom fighters.

Syed Humayun Kabir Khadem, learned Advocate submitted that the petitioners 1, 18-19 were already getting state honorarium in accordance with the provisions of the Regulations, 1984 and as such they acquired a vested right to get it as usual at the previous rate, but the Trust without giving them any opportunity of being heard or assigning any reason abruptly stopped/reduced payment of state honorarium, which is illegal and without lawful authority. The honorarium that is being given to petitioners 2, 3, 5-12, 14-17, 20-28 and 30-57 is not adequate and therefore, the respondents should also be directed to enhance the amount.

At the concluding stage of hearing, Mr. Khadem apprises the Court that he has retired from the case, but has not filed any application seeking leave of the Court to that effect.

Mr. J. K. Paul, learned Advocate appearing for the Trust submits that the state honorarium of petitioner 1 was stopped under instruction of the Ministry of Liberation War Affairs as he was not injured "*during the war of liberation*". He was actually injured in a mine explosion on the date of surrender of the Pakistani forces and it is not very clear whether he was injured in any battle. The state honorarium is being provided only for the

disable freedom fighters who were injured during the war of liberation. Mr. Paul, however, concedes that petitioners 2-3, 5-12, 14-17, 20-28 and 30-57 with disability of 5% are getting honorarium from July, 2003 in present category 'F', amount of which was initially Taka 600/- and is now Taka 3600/- per month. Petitioners 18-19 were getting state honorarium from 1999 in previous category '3' amount of which was monthly Taka 2004/-. In 2003, the Government in the Ministry of Liberation War Affairs on recommendation of the *Juddhahata Muktijoddha Bachhai Committee* reclassified the disable freedom fighters in six categories from A-F, wherein petitioners 18-19 with 5% disability fell in category 'F', amount of which was fixed at Taka 600/- per month and in this way their honorarium was reduced. However, by this time the amount has been enhanced to Taka 3600/- and the said petitioners have been receiving the same. Petitioners 4, 13 and 29 are not enlisted as disable freedom fighters, nor did they file any application for such enlistment to the Trust. Therefore, the question of stopping their state honorarium does not arise.

Mr. Goutam Kumar Roy, learned Deputy Attorney General took time to collect necessary materials from the Ministry of Liberation War Affairs and file an affidavit-in-opposition, but failed. He, however, opposes the Rule on the ground that most of the writ petitioners have not annexed any documents in support of their respective claims and as such they are not entitled to get the relief sought for in this petition.

We have gone through the decisions referred to by the writ petitioners. All those decisions were passed relying on 14 BLC (AD) 41 by which the Appellate Division affirmed the judgment passed in Writ Petition No.2183 of 2004 and dismissed Civil Petition for Leave to Appeal No. 1159 of 2007 with some other civil petitions of same nature. In doing so the Appellate Division relied on two passages of the impugned judgment of the High Court Division. The passages are quoted below:

“It is a matter of surprise, that after long lapse of 32 years, the degree of disabilities of the petitioners were again determined by the Committee and pursuant to the report dated 31.3.2003 (Annexure:X-3) the ‘Rastrio Sammani Bhata’ of the petitioners were stopped.

“Admittedly before passing the impugned orders the petitioners were not served any notice or show cause against the proposed action. They were not given any opportunity to be heard. Natural Justice requires that before a person is punished an opportunity to show cause against the proposed punishment should be afforded to him (in Writ Petition No.2183 of 2004)” (paragraph 9, Page 44)

In those cases the Rules were made absolute as the petitioners therein were getting state honorarium from long before at a higher rate, which was subsequently stopped/curtailed/reduced without service of show cause notice. As the subsequent classification was made to their disadvantage, the new category ‘F’ was, therefore, held not applicable for them on the ground that they had acquired vested right to get state honorarium at higher rate.

The ratio laid down in that case is applicable only in respect of petitioners 1 and 18-19 in the present case inasmuch as the honorarium of petitioner 1 was stopped and that of petitioners 18-19 was reduced without giving them any opportunity of being heard and assigning any reason, and also in violation of their vested right. But in respect of other petitioners, the cases cited are distinguishable.

On perusal of the documents it appears that petitioner 1 Md. Siddiqur Rahman is a disable freedom fighter who lost his leg in 1971. He has also annexed a passbook (annex-A) from which it is evident that he was getting state honorarium from 1999 in category '2' initially at the rate of Taka 1816/- per month (including medical allowance). Nowhere in the affidavit-in-opposition or in the supplementary affidavit-in-opposition filed by the respondent-Trust it is stated that before stopping the state honorarium of petitioner 1 and reducing that of petitioners 18-19, they were served with any show cause notices. It is also admitted that petitioner 1 lost one leg in a mine explosion on 16th December, 1971. Definitely this mine was installed in course of the war of liberation either by the Pakistani occupation forces or by the freedom fighters to obstruct the movement of their adversary. There is also difference between the words 'war' and 'battle'. Any action, propaganda, campaign, spying even any painting, music, story and poetry against the enemy forces and all battles collectively constitute a war. Therefore, it cannot be said that petitioner 1 did not lose his leg in the war of liberation on the plea that he was not engaged in any

battle on 16th December, 1971. It is correct that on 16th December, 1971 the battles ended in Dhaka, but in many other areas of the Country including adjacent Mirpur battles were still taking place. So, we do not accept the submission of Mr. Paul that petitioner 1 was not injured during the war of liberation. As he (petitioner 1) is disable on account of loss of his leg and fell in previous category '2', at present he will fall in category 'C' amount of which was initially Taka 3500/- and is now Taka 11340/- per month.

It is mentioned that in 1999 the disable freedom fighters were classified in three categories from 1-3, but now they are classified in six categories from A-F, of which category 'C' is described as follows:

শ্রেণী বিভাগ	পঙ্গুত্বের হার	যাহার জন্য প্রযোজ্য
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“সি”(Class C)	৬১%-৮০%	এদের উল্লখযোগ্য পঙ্গুত্ব আছে কিন্তু এগাচ বা কৃত্রিম পায়ের সাহায্যে নিজেই চলাফেরা করতে পারেন। এই শ্রেণীতে নিম্নলিখিত পঙ্গুত্বসম্পন্ন ব্যক্তিগণ অন্তর্ভুক্ত। যেমনঃ ক। বোবা। খ। সম্পূর্ণ বধির। গ। এক পা কাটা (Amputation of thigh, leg or foot)। ঘ। এক হাত কাটা (Amputation of arm, forearm or hand) ঙ। নার্স বা হাড্ডি আহত হয়ে এক পা বা হাত পঙ্গু।
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(emphasis supplied)

Admittedly petitioners 18-19 were getting state honorarium from 1999 in previous category '3' at the rate of Taka 2004/- per month. They have acquired a vested right to continue with the same and it cannot be reduced or curtailed without giving them any opportunity of being heard and without assigning any valid reason. The new classification under the

Memo dated 28.10.2003 will not be applicable in their case as it will curtail their existing benefits. The previous category '3' has been reclassified into two new categories i.e. 'E' and 'F'. Since their classification in new category 'F' will reduce their monthly honorarium, it will not be applicable for them and they will fall in category 'E' because of their vested right as they were already getting state honorarium at the rate of Taka 2004/-. The amount of new category 'E' was initially Taka 2,500/- and is now Taka 8100/- per month. Thus the previous category '2' corresponds to new category 'E'.

Petitioners 2-3, 5-12, 14-17, 20-28 and 30-57 have not annexed any documents to show that they filed any applications in 1997-98 for enlistment as disable freedom fighters or that they were getting honorarium before July, 2003. This is also not their case that they are entitled to higher category or their disability is more than 5%. However, the respondent-Trust admits that these petitioners with 5% disability have been getting honorarium from July, 2003 in category 'F' amount of which was initially Taka 600/- and is now Taka 3600/-. Since they started getting the honorarium from the very beginning of their enlistment as disable freedom fighters in 2003 under the new classification as provided in the memo dated 28.10.2003 and the payment or amount has never been stopped/reduced/curtailed, no question of acquiring any vested right on their part to get state honorarium at previous rate arises. We do not find anything wrong with these petitioners.

No document has been annexed to show that petitioners 4, 13 and 29 are disable freedom fighters or that they were ever enlisted with the Trust or filed any application for such enlistment. In such a case it is difficult to say at this stage whether these petitioners are at all disable freedom fighters and entitled to get any state honorarium.

The second part of the Rule i.e. seeking direction upon the respondents to enhance the amount of state honorarium is a matter of policy to be adopted by the Government as well as the Trust. This Court cannot direct the Government or the respondent-Trust to frame any particular policy or to enact/amend any law or make regulations and therefore, we do not find any substance in the second part of the Rule.

In view of the discussions made above we find substance in the first part of the Rule in respect of petitioners 1 and 18-19. Accordingly the Rule is made absolute in part in respect of petitioners 1, 18 and 19 and is discharged against others. The stoppage of state honorarium in respect of petitioner 1 is declared to be without lawful authority and the respondents are directed to give him state honorarium in new category 'C' with all the arrear counted from the date of stopping his honorarium.

The reduction of amount payable to petitioners 18-19 and their classification in new category 'F' is also declared to be without lawful authority. The respondents are directed to give them state honorarium in category 'E' with arrear from the date of reduction of the amount under new classification.

Petitioners 2-3, 5-12, 14-17, 20-28 and 30-57 will get their honorarium in accordance with the memo dated 28.10.2003 which they are already getting. However, if petitioners 4, 13 and 29 file applications in future to the respondent-Trust, it will dispose of the same in accordance with law within shortest possible time.

Mohammad Bazlur Rahman, J:

I agree.