

ICT BD (ICT-2) Miscellaneous case No.04 of 2014

Order No.01

Dated: 28.12.2014

It has come to our [Tribunal-2] notice that The Daily Prothom Alo[20 December 2014] and The New York Times[Editorial, 23 December 2014] have published a news item and 'Editorial' respectively over the order dated 02 December 2014 punishing David Bergamn for the offence of contempt.

1. Taking those into *suo moto* notice we have perused the alleged news item published in The Daily Prothom Alo [20 December 2014] and the 'Editorial' published in the New York Times [23 December 2014]. Prima facie the news item and the editorial in question seem to have been based on misconception and exceeding limit of recognised norms.

2. It appears that the news item titled *০২ ডিসেম্বর ২০১৪ সালে আইসিটিবি মিরায় ৫০ জনের বিবৃতি* published in the **Daily Prothom Alo, 20 December 2014, page 2** relates to the order dated 02 December 2014 punishing David Bergman a foreign national who has been working in Bangladesh as a journalist for the offence of contempt under section 11(4) of the International Crimes (Tribunals) Act 1973.

3. The news speaks of a '**statement**' made by 50 citizens expressing view and criticism on the order punishing David Bergman on contempt charge. The news item *prima facie* shows that the 'statement' expresses concern about the "freedom of expression of journalist, researcher and analyst on the issue of 'death figure in 1971'". Presumably, the signatories are in impression that the contemnor has been punished for making criticism on 'death figure in 1971'.

4. Next, the core content of the editorial published in the New York Times [***Muzzling Speech in Bangladesh* By THE EDITORIAL BOARD DEC. 23, 2014**] constitutes a classical example not only of endorsing a punished contemnor's conduct who found guilty for the charge of scandalising the Tribunal a lawfully formed judicial forum -- but the view expressed in the editorial tends to demean the judiciary of a sovereign country, Bangladesh, prima facie appears.

5. We are surprised to note that the Editorial Board of The New York Times a renowned international daily can make comment "**If justice is truly what the International Crimes Tribunal seeks, it should immediately overturn Mr. Bergman's sentence and Conviction**". We fail to understand how a daily news paper of international repute asks a court of law of a sovereign country by saying-- '**it [Tribunal] should immediately overturn Mr. Bergman's sentence**'.

6. The Tribunal exercised its judicial power as prescribed by law [The Act of 1973 enacted by the sovereign parliament of Bangladesh] and the Tribunal is quite independent in the exercise of its functions subject only to the Constitution and to the

law. We welcome post judgment criticism. But the Tribunal is at the same time empowered even to protect the notion of administration of justice in the mind of public if such criticism subverts it.

7. In view of above, in order to dispel misconception and since the Tribunal is obliged to protect its jurisdiction and authority, we indispensably need to know-

(i) Whether the statement [published in the **Daily Prothom Alo, 20 December 2014, page 2**] has been made in the interest of public and

(ii) On the basis of which analysis the signatories have made such statement titled *ÓeM@tbi mRvq 50 bMmiKí D:0MÓ.*

8. Accordingly, we decide to ask the Editor of the Prothom Alo for submitting copy of the full text of the statement so made and signed by 50 citizens [the **Daily Prothom Alo, 20 December 2014, page 2**] to the Registrar of the Tribunal **by 31.12.2014** positively.

9. On getting it as asked above, further necessary order will be passed on analogous examination of the statement published in the Daily Prothom Alo and the 'Editorial' published in the New York Times. Let the matter be entered and registered as Miscellaneous Case accordingly.

10. Let copy of this order be communicated to **The Editor, The Daily Prothom Alo** for compliance.

Justice Obaidul Hassan, Chairman

Justice Md. Shahinur Islam, Member