

International Crimes Tribunal-2[ICT-2]
Old High Court Building, Dhaka, Bangladesh

ICT-2 Miscellaneous Case No.04 of 2014

[In the matter of 'statement' made by 49 citizens on Tribunal's
order convicting David Bergman for contempt]

Order No.04

Dated 14.1.2015

Dr. Shahdeen Malik, Advocate, Bangladesh Supreme Court [one of makers to the 'statement' in question], in compliance with Tribunal's earlier order has submitted today the address of the 49 citizens the makers to the 'statement'. We have seen it as placed by the Registrar.

Now the record is taken up for order.

1. The Tribunal taking into its notice the news item titled **৫০ জনের বিবৃতি নিয়ে ৫০ জনের বিরুদ্ধে দণ্ড** published in the **Daily Prothom Alo, 20 December 2014, page 2** criticizing on the order dated 02 December 2013 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 asked the Editor, the Daily Prothom Alo for furnishing the signed copy of the text of 'statement'.

2. Accordingly, the Editor of the daily Prothom Alo by a communication dated 31.12.2014 along with a copy of unsigned 'statement' contended that on receipt of the statement through e-mail from Hana Shams Ahmed [one of makers to the statement] on 18.12.2014 it published it on 20.12.2014. The Editor, Prothom Alo in his correspondence states-

"On 18.12.2014 we received the said statement of 50 citizens [Annexure-1] through an email from Hana Shams Ahmed, a writer and activist and one of the makers to the 'Statement'. After receiving the statement we cross-checked & verified the authenticity of the 'statement' and published the news on December 20, 2014."

3. The Tribunal, on getting the unsigned copy of the text of 'statement' and having regard to the contention of the Editor, the daily Prothom Alo, by its order dated 31.12.2014 asked Dr. Shahdeen Malik, Advocate, Bangladesh Supreme Court and Hana Shams Ahmed to provide with the address of all other signatories/makers to the 'statement' with further direction to the Editor, Prothom Alo to communicate the order to Hana Shams Ahmed.

4. Now, it appears that in compliance with direction to the Editor, the daily Prothom Alo, Hana Shams Ahmed who allegedly sent the 'statement' through e-mail to the Prothom Alo for its publication has submitted address of 49 citizens, the makers to the 'statement' in question.

6. However, seen and perused the address of 49 signatories of the statement they made which has been published in the daily **Prothom Alo on 20.12.2014** as news item titled **ওেলগ'ত্বি মরুৎ 50 বল্মিঃKi DঃOMÓ**. Also perused copy of the full text of the 'statement' in question as submitted earlier [31.12.2014] by the Editor, the daily Prothom Alo as asked by Tribunal's order dated 28.12.2014.

10. It appears that the core content of the 'statement' questions '**transparency and openness**' of the Tribunal and also **justification of the order sentencing** David Bergman for the act of scandalising the Tribunal constituting the offence of contempt as he initiated **debate on the history of our War of Liberation** [death figure in 1971]. The 'statement' expresses concern about the '**stifling effect**' on '**freedom of expression**' for the reason of the order convicting David Bergman in the contempt proceeding.

12. The way the makers to the 'statement' have expressed their concern on the matter arising out of the order convicting David Bergman for the offence of contempt *prima facie* appears to have tended to belittle the authority and institutional dignity of the Tribunal in the mind of public which goes against 'public interest'.

13. Therefore, we are of the view that the matter needs to be disposed of only after affording opportunity to 49 citizens, the makers to the 'statement' to explain the 'statement' they made and their conduct. Accordingly, the 49 citizens, the makers to the 'statement' are asked to explain the contents of the 'statement' they allegedly made and their conduct either by appearing in person or through engaged counsel **on or before 27 January 2015**.

14. Let copy of this order be communicated to the makers to the 'statement' who have been staying within the territory of Bangladesh in their addresses [**Annexure 1: List of Addresses**] provided with by **Hana Shams Ahmed**.

15. The makers to the 'statement' who have been staying in USA, UK, Australia, Sweden and Canada [address shown in serial nos. 3, 18, 24, 25, 30, 33, 37, 38, 39, 42, 44 and 45 of the **Annexure 1** the list of Addressees] are asked to submit their explanation through the respective Bangladesh Mission within **03[three days] from the date of receipt of the copy of this order.**

16. For necessary compliance, in this regard, let copy of this order be transmitted to them through the Ministry of Foreign Affairs, Government of Bangladesh, Dhaka. The Secretary, Ministry of Foreign Affairs will collect their explanation through the Bangladesh Mission in those countries [USA, UK, Australia, Sweden, Netherland and Canada] and on receipt of the same it [MoHA] will submit it to the Registrar of the Tribunal **on or before 27 January 2015.**

17. The respective Bangladesh Mission shall keep the Tribunal informed of the matter of non response, if any, on part of the recipient of copy of Tribunal's order within prescribed time, through the Ministry of Foreign Affairs, Government of Bangladesh, Dhaka for the purpose of taking it to Tribunal's notice on or before the next date fixed. The order will be available in the website of the Tribunal [www.ict-bd.org]

18. The Registrar of the Tribunal is directed to do the needful.

**Sd/-Justice Obaidul Hassan, Chairman
Justice Mozibur Rahman Miah, Member
Justice Md. Shahinur Islam, Member**