

International Crimes Tribunal-2
Old High Court Building,
Dhaka, Bangladesh.

ICT BD (ICT-2) Misc. Case No.04 of 2014

The State Vs. Editor, The Daily Protham Alo

Order No.08

Dated 11.02.2015

1. This Tribunal [ICT-2] took notice of the editorial published in the **New York Times** [*Muzzling Speech in Bangladesh* By THE EDITORIAL BOARD **DEC. 23, 2014**] by its order dated 28.12.2014 together with the news item published in the daily Prothom Alo, 20 December 2014, page 2.

2. Both involved criticism on the decision of this Tribunal convicting a journalist David Bergman for the offence of contempt under the provisions of the International Crimes (Tribunals) Act 1973. The news item published in our national daily relates to 'statement' made by 49 citizens expressing their concern on the matter. Already they in compliance with the Tribunal's order have furnished explanation in respect of their conduct expressing 'apology' and 'regret'. Those have been kept with the record for further order.

3. It appears that 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.

4. The **editorial** states that--'**it [Tribunal] should immediately overturn Mr. Bergman's sentence**'. We fail to understand how such asking by a daily news paper of international repute is made. A judicial order cannot be '**overturned**' on own motion. There can be no room to urge it arbitrarily by any body for overturn' the sentence without going through any accepted legal process.

5. 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.

6. In view of above, at this stage we deem it expedient to have explanation, if any, on part of the New York Times for the unwarranted and derogatory comment it made in its editorial titled '**Muzzling Speech in Bangladesh**' published by the Editorial Board **Dec. 23, 2014** to dispose of the matter analogously with that related to the 'statement' made by 49 citizens published as a news item in a local national daily..

7. Accordingly, the New York Times is asked to submit their explanation through the Bangladesh Mission in New York, USA. For necessary compliance, in this regard, let copy of this order be transmitted to the appropriate authority of the New York Times through the Ministry of Foreign Affairs, Government of Bangladesh, Dhaka.

8. The Ministry of Foreign Affairs will collect the explanation, if any, through the Bangladesh Mission in USA and on receipt it the same shall be submitted to the Registrar of the Tribunal on or before 20.2.2015. Even in case of non response on part of the New York Times, the Bangladesh Mission in USA shall make this Tribunal informed of it through the Ministry of Foreign Affairs, Government of Bangladesh by the date as mentioned above.

9. **The Secretary, Ministry of Foreign Affairs**, Government of Bangladesh is asked to take immediate and necessary measure for compliance of this order. The Registrar of the Tribunal is directed to do the needful at once.

Let this matter be posted in the daily cause list on 23.02.2015 for passing necessary order.

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