

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

The State Vs. Editor, The Daily Prothom Alo

Order No.09

Dated 23.02.2015

By order dated 14.01.2015 this Tribunal asked 49 Citizens who had voiced their concern by making statements in "the Daily Prothom Alo" dated 20.12.2014 over awarding punishment to David Bergman-a British national to explain their conduct and position. In view of such order the citizenry have furnished their explanation by engaging counsels as well as in person. Today, following our order dated 08.02.2015 the maker of the statements at home, entered their appearance before this Tribunal. Now, the record is taken up for passing Order.

We have very meticulously perused the article titled "*Bargmen er Shajai Ponchash Nagoriker Udbek*" published on 20.12.2014 in the 'Daily Prothom Alo', being evolved from an undated testimonial that jointly shared by all those personalities under the caption "*Statement of Concern regarding Tribunal's Contempt Judgement on David Bergman*"- so submitted on 31.12.2014 by its (the Daily Prothom Alo) Editor and each and every explanations. Since we find the tone and tenor of the explanations submitted, is not identical, we seem it expedient to evaluate the explanations independently in the following manner:

First, Dr. Shahdeen Malik, a practicing Lawyer of Supreme Court, Bangladesh in his explanation did not justify the contents that has been published in the Daily Prothom Alo' dated 20.12.2014 rather has tendered unconditional apology before this Tribunal for any dishonor that may have denigrate the dignity and majesty of this Tribunal. In similar vein, Mr. Hafizuddin Khan, a retired Comptroller and Auditor General, Government of Bangladesh and an ex-advisor to the Care Taker Government Bangladesh has also craved unconditional apology for his concern, he ventilated over awarding the verdict against David Bergman, published. Eventually, both have thrown themselves at the mercy of this Tribunal.

On going through their respective explanation, we at least do not find anything therein as to what prompted them to voice such concern and share the views through issuing a 'statement' under the heading "Statement of Concern regarding Tribunal's Contempt Judgement on David Bergman" that has been published.

The statement in question did not reflect that the makers to it had gone through the decision convicting David Bergman. We think that they would not have made them party to such statement if really had they taken pain in going through the entire decision of the Tribunal.

Conduct of the convicted journalist was a flagrant onslaught on the independence of the judiciary, destructive of the orderly administration of justice and a challenge to the supremacy of the Rule of Law. The maxim "*Salus populi suprema lex*", that is "the welfare of the people is the supreme law" adequately enunciates the idea of law. This can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted, and this cannot be effective unless respect for it is fostered and maintained. We believe that the notable citizens who have tendered apology for their conduct they have shown in the 'statement' have been now able to perceive this settled norms and responsibility.

We firmly believe, both the citizens by this time, have earned high esteem and eminence in their respective fields for their immense contribution towards the society and the nation as well by their invaluable analysis on contemporary national issues telecast and broadcast both in electronic and print media as well as in different seminar and symposium for not gaining themselves but for the cause of nation's upliftment. We thus, fervently hope, in future, they will be more careful in making or sharing any statement that could ever disparage the authority and dignity of the Court of law.

Above all, they have figured out their imprecision in sharing and making statements, called in question. Their such introspection has not only upgraded the majesty of the Tribunal but also signify their utmost admiration to the process of the administration of justice that will invariably usher reposing faith by the general mass on the fairness of court of law in dispensing justice. In such a parlance, we accept the apology tendered by Dr. Shahdeen Malik and Mr. Hafizuddin Khan finding it just and proper for their remorseful disposition and accordingly, we exonerate them from further prosecution.

From the statements of 12 citizens named, Zakir Hossain-human rights activists, Shahnaz Huda-academic, Badiul Alam Majumder-social activist, Imtiaz Ahamed- teacher, Rasheda Khatun-development Practitioner, Naila Khan-Professor,Child Neurology, Ilira Dewan-Private Service holder, Amena Akter Mohshin-teacher, Asif Nazrul-academic, Syeda Rizwana Hasan-academic, Arup Rahee- Private Service holder and Shahina Akhter- Private Service holder though have furnished their explanation separately but their assertion are entirely similar.

In cumulative analysis of paragraph 4 of their explanation, we hold the view that, they have strenuously attempted to justify the correctness of the core-essence of 'statement' -that called in question in the instant proceeding and in a very stray manner they sought 'apology' leaving it to the prudence of this Tribunal to consider whether their such venture ever constitute contempt of the Tribunal.

When the Tribunal was about to pass the order on the explanation given by these 13 citizens their engaged lawyer Mr. Jotirmoy Barua apprised the Tribunal that his clients are repentant for the statement they made and want to submit them to the mercy of the Tribunal by expressing unconditional apology and for this reason they want 30 minutes time to amend their written explanation.

After allowing the prayer out of 13, 12 citizens have expressed their remorseful unconditional apology to the Tribunal almost in the similar words spelt out by Mr. Shahdeen Malik & Mr. M. Hafizuddin. We are inclined to accept their unconditional apology. Accordingly we exonerate them also from the prosecution.

Ms. Nihad Kabir, the learned advocate representing 14 citizens namely Ms Seuty Sabur, Ms. Faustina Pereira, Mr. Masud Khan, Md. Nur Khan, Mr. Mohiuddin Ahmed, Mr. Afsan Chowdhury, Ms. Firdous Azim, Mr. Ziaur Rahman, Ms. Hana Sams Ahmed, Mr. Anu Muhammad, Ms. Samia Huq, Ms. Anusheh Anadil, Ms. Lubna Marium, Ms. Muktasree Chakma Sathi prayed for some time to take further instructions from her clients to clarify their position. She also prayed time for the same reason on behalf of Ms. Tahmima Anam presently who is residing abroad.

Ms. Shirin Huq with a similar contention prayed for some more time on behalf of herself and rest 7 persons who are appearing in the Court in person.

Mr. Mainul Haque, the learned advocate appeared for Dr. Perveen Hassan also prayed for short adjournment to clarify her position.

Considering all aspects, we are of the view that justice would be met if the aforesaid 35 persons are given some more time to clarify their position. Accordingly, the verbal prayers made by the learned advocates and Ms. Shirin Huq are allowed. They are directed to clarify their position by 3rd March, 2015.

We have also received information from the Ministry of Foreign Affairs regarding service of notice upon the international Daily "New York Times". It appears that Bangladesh Mission in Washington has already communicated the Tribunal's order with the Editorial Board of the "New York Times" an international newspaper published from USA, but they have not responded yet.

New York Times is further asked to explain its conduct regarding publishing the article "Muzzling Speech in Bangladesh" and other comments made by it regarding Mr. Bergman's sentence and conviction by 3rd March 2015.

The office is directed to post this order in the website of the Tribunal and to send the copy of this order to the Ministry of Foreign Affairs to communicate with the same to the Bangladesh Mission in USA so that they can send the copy of the said order to the concerned authority of the international Daily New York Times.

Office is also directed to send the copy of this order to the persons staying aboard through our Missions of the respective countries.

Justice Obaidul Hassan, Chairman

Justice Mozibur Rahman Miah, Member

Justice Md. Shahinur Islam, Membe