

International Crimes Tribunal-2

Old High Court Building, Dhaka, Bangladesh

ICT-BD Miscellaneous Case No.04 of 2013

[Contempt Proceeding U/S 11(4) of the Act of 1973]

Chief Prosecutor

v.

(1) Selim Uddin, Dhaka City Assistant Secretary General of Jamat E Islami

(2) Hamidur Rahman Azad, M.P and member of Central Executive Council of Jamat E Islami [Absconded]

(3) Rafiqul Islam Khan, Acting Secretary General of Jamat-E-Islami[Absconded]

Before

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Judge Md. Shahinur Islam, Member

Mr. Tajul Islam, Advocate, Bangladesh Supreme Court

For the Contemnor Mr. Selim Uddin

[Decision on Contempt proceeding U/S 11(4) of the Act of 1973]

Date of Decision: 09 June 2013

1. Today is fixed for decision. The contemnor Mr. Selim Uddin [on bail in connection with the contempt proceeding] who is in detention in connection with some other criminal case has been brought before the Tribunal from the prison. Two other contemnors remain absconded, according to report of police.

I. Backdrop of the Proceedings

2. On 04-02-2013 Jamat-E-Islami, Bangladesh gathered a public meeting in front of shapla Chattar at Motijheel as well as in the press briefing where some of its prominent leaders made some derogatory and disparaging speeches against this Tribunal and its ongoing trial which were published in numerous national dailies.

3. On 07 February , 2013 it came into notice of the Tribunal from reports titled "**DMÖAe ~#b RıgvıvZ**" and "**Jamaat warns of civil war**" published in The Daily Prothom Alo 05th February 2013 , The Daily Star 05th February 2013 respectively that Mr. Selim Uddin, Assistant Secretary General of Jamat E Islami, Dhaka City and Mr. Hamidur Rahman Azad, M.P and a member of Central Executive Council of Jamat E Islami have in a political public gathering held on 04 February 2013 and Mr. Rafiqul Islam Khan, Acting Secretary General of Jamat-E-Islami in a press release made remarks which *prima facie* appeared to be extremely derogatory to the independence and image of the Tribunal[ICT-2] a lawfully constituted court of law and a serious threat intending to interfere and demean the lawful authority and the normal course of administration of justice of the Tribunal. Thus the Tribunal taking the matter into cognizance issued rule asking them to explain by appearing in person before this Tribunal on 20 February 2013 as to why contempt proceedings shall not be initiated against them under section 11(4) of the International Crimes (Tribunals) Act 1973.

4. Upon taking cognizance of those speeches and report we extremely felt it expedient to ask the contemnors to explain their conduct by appearing in person before this Tribunal as it touches the very credibility and majesty of the tribunal which we think to have also stained public confidence about the fairness of the War Crimes Trial pending before the tribunal with those contemptible comments and thereby vide our order dated.07-02-2013 Contemnors were directed by appearing in person on 20-02-3013 to explain as to why contempt proceedings under section 11(4) of the International Crimes (Tribunals) Act,1973 (Hereinafter referred to as Act of 1973) shall not be initiated against them. And that very order gave rise to aforesaid Miscellaneous Case.

5. Mr. Hamidur Rahman Azad, M.P and Rafiqul Islam Khan remain absconded in flagrant violation of Tribunal's order and even they, according to police, could not be produced by causing their arrest as ordered by the Tribunal. However, finally police produced one contemnor Mr. Selim Uddin before the Tribunal in execution of warrant issued and he got bail, and submitted his written explanation which was not considered satisfactory and thus Tribunal ordered for initiation of contempt proceeding against all contemnors.

II. Steps taken by the Contemnors

6. On.21-03-2013 the Contemnor no.1-Selimuddin submitted an explanation in view of the order dated.10-03-2013. On that very date, Mr. Md. Tajul Islam, learned Advocate along with three other learned Advocates by filing 2 separate sets of power on behalf of absconded Contemnor no.2 Hamidur Rahman Azad MP and Contemnor no.3.Rafiqul Islam Khan filed an application and prayed for dispense with the personal appearance of those two absconded contemnors on the ground stated therein. The said application was simply turned down on clear assertion that the learned Advocates have got no right to represent the absconded contemnors who are just fugitive from justice. Then 10-04-2013 was fixed for filing execution report by the Police of the Warrant of arrest so issued against those two contemnors. The explanation so filed by the Contemnor no.1 was thus kept with the record. But on 10-04-2013 those two absconded contemnors could not be produced by the police resultantly, 21-04-2013 was fixed for hearing of the explanation given by the Contemnor no.1.
7. Ultimately, on 21-04-2013 the ‘explanation’ so submitted by the Contemnor no.1 Selim Uddin dated.21-03-2013 was taken up for hearing though neither the learned Advocate for the Contemnor remained present nor any steps seeking adjournment of the hearing was taken on his behalf though the learned prosecutor Mr. Mokhlesur Rahman, remained present before the Tribunal.
8. However, this Tribunal on meticulous reading of the explanation so given by the Contemnor no.1 rejected the same finding it toally unreasonable and unsustainable. On the other hand, it seems to us that the Contemnor no.2-3 having full knowledge about the proceeding deliberately flouted the Tribunal’s order by not appearing before this Tribunal.
9. Today we are going to render our unanimous decision on the contempt proceeding drawn under section 11(4) of the International Crimes (Tribunals) Act 1973. Of three contemnors only Mr. Selim Uddin is before the Tribunal. Two other neither made their appearance, at any stage of proceeding, as directed nor could the police cause their arrest in execution of WA issued by this Tribunal.
10. In this circumstances, in rendering decision we have carefully perused the written explanation submitted by Selim Uddin, alleged conduct of the contemnors and the video clippings of the alleged public meeting together with the act of serious disobedience of Tribunal’s order by (1) Mr. Hamidur Rahman Azad, M.P and a member of Central Executive Council of Jamat E

Islami and (2) Mr. Rafiqul Islam Khan, Acting Secretary General of Jamat-E-Islami.

III. Essence of contempt

- 11.** Selim Uddin and Mr. Hamidur Rahman Azad, M.P allegedly made offending and disparaging remarks in a public meeting of their party [JEI] attacking the lawful authority of the Tribunal and creating obstruction to *subjudice* proceeding. Another contemnor Mr. Rafiqul Islam Khan, Acting Secretary General of Jamat-E-Islami in a press release made the alleged remark tending to wage civil war and threatening the normal course of administration of justice.

- 12.** The essence of contempt is action or inaction amounting to an interference with or obstruction to or having a tendency to interfere with or obstruct the normal course of administration of justice. Section 11(4) of the Act of 1973 is wide and the same is referable even to doing anything which tends to bring the Tribunal or its members into hatred, in addition to obstruction to its process or doing anything which tends to prejudice the case before it. The phrase ‘doing anything’ refers to publication or speech whether by words spoken or written or even by signs or by visible representations which scandalizes or tends to scandalize, or lowers or tends to lower the authority of the Tribunal or prejudices or interferes or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner. Criminal contempt of court may also consist the acts committed out of court *ex facie curie* such as publishing matter or indulging in conduct likely to prejudice the fair trial of pending proceedings. In this type of case, actual intention to prejudice the proceedings is immaterial.

IV. Alleged Conduct of the Contemnors for which they have been proceeded with

- 13.** We consider it expedient to adjudicate first the matter involving the remarks made by absconded contemnors Mr. Hamidur Rahman Azad, M.P and Mr. Rafiqul Islam Khan, Acting Secretary General of Jamat-E-Islami together with their conduct of disobedience of Tribunal’s order to explain by appearing in person before the Tribunal. They allegedly made the remarks attacking the Tribunal’s authority in a political public gathering held on 04 February 2013.

**ত` কতক মধ্য ত`তক এতত নতj যেতকত উবে`য়j ত`তক
iq ত` I qvi m`hwm tbB/”**

V. Submission by the learned counsel for the contemnor Selim Uddin

18. Mr. Tajul Islam, the learned Advocate at the very outset takes us to the reply he submitted for the Contemnor no.1. On going through the said reply we find that, in justifying the comment of the Contemnor the learned Advocate characterized the comment made by the contemnor in three different dimensions and tried to justify the comments in paragraphs no.7-12 of the reply. It appears to us in those paragraphs he has tactically misconstrued the comment of the Contemnor he made in the rally dated.04-02-2013 as well as relied upon alleged reporting of some foreign T.V. Channels, foreign personalities as well as some Human Rights & International Organizations as the basis of making such comments by the Contemnor no.1. In the second episode of the reply specially from paragraph no13 - 15 the learned Advocate explains certain circumstances that prevented his client (contemnor) from appearing before this Tribunal as ordered. In paragraph no.16 it has been stated that this contemnor had no intention to make any contemptuous statement and he made no comment in relation to any pending proceeding. Finally in paragraph no.17-18 of his reply the Contemnor has tendered unconditional apology.

VI. Screening of the Video Footages & the reaction of the Contemnor no.1

19. After completion of the submission of Mr. Md. Tajul Islam we asked the concerned official of the Tribunal to screen the video footage we collected from different electronic medias as we have stated in foregoing paragraph no.6. For time constraint only the video footage of RTV and ATN News of the program of Jamat-E-Islam dated.04-02-2013 were screened in the Court room which were witnessed by the learned Counsels of both sides, including the Contemnor no.1 himself who was asked to take the front row of the seat for the convenience of having look. At the end of screening we then invited the Contemnor to make his submission if any and in response to that he very humbly sought unconditional apology saying that-“I had no intention to disrespect the court even though, if it hurts the court, I apologize for my comments”.

VII. Deliberations

20. First, we fail to understand on what logic the learned defence counsel for the contemnor Selim Uddin has argued that the alleged utterances were directed to the government and not to the Tribunal. The Tribunal is quite independent judicial body set up under a valid legislation. The government or the executive branch has nothing to do with the functioning of the Tribunal and also with the demand of bringing proceedings before the Tribunal to a halt and not to give negative verdict against an accused before the Tribunal. It is thus very hard to agree with what has been submitted by the learned defence counsel.
21. Next, in contempt proceeding, begging unconditional apology and justifying contemnor's conduct cannot walk together. We are of view that the learned counsel has made effort to blow hot and cold simultaneously which cannot be viewed as apposite. Besides, in no way we are persuaded to agree with the submission which seems to be pervasive. The video clippings of the alleged part of his speech do not show that the contemnor Mr. Selim Uddin actually intended to reflect view imported from any other source. Besides, echoing another's view in public may not always be lawful and in conformity with the right to freedom of speech. His body language in making such extreme offending and threatening statement was not in traditionalism with least norm of civility and it is hard to believe that a responsible person of a political party[JEI] had opted to make him part of anarchism.
22. Mr. Selim Uddin also by making such vulnerable statement not only questioned lawful authority of the Tribunal but threatened to wage civil war in case of any verdict. It was clear interference and obstruction to administration of justice and rule of law.
23. Now, we would see whether branding the Tribunal as 'Controversial' as well as threatening not to 'deliver any verdict' can constitute any contempt of Court. There is no gainsaying the facts that under the Provision of section 6 of the Act of 1973 the very 'Tribunal' was set up. And International Crimes (Tribunals) Act,1973 (Act no. XIX of 1973) was enacted by our sovereign parliament as a valid piece of legislation and since the very enactment of that legislation no successive Governments deem it necessary to rescind or abrogate the said legislation rather Article 47(3) and 47A(2) has given constitutional protection to the Act of 1973 and that of its 'Tribunal'. By uttering a hatred comment as regards to the 'Tribunal' by no less a person than a Dhaka City Unit Assistant Secretary General of Jamat-E-Islami- the Contemnor no.1 certainly carries wrong signal to the commoners and his such

utterance branding the Tribunal as “Controversial” definitely tends to bring the Tribunal in to hatred which undoubtedly constitutes contempt of the Tribunal.

24. The verdict of ICT BD case no.02 of 2012(*Chief Prosecutor- vs-Abdul Quader Molla*) was pronounced on.05-02-2013 which was made CAV(*Curia Advisari Vult*) and that very news of passing the judgment was widely circulated/aired both in print and electronic media and until and unless the verdict is pronounced it is treated as *sub-judice* matter. But on.04-02-2013 just one day before the verdict is pronounced the Contemnor further remarked that ‘**There is no scope to deliver any verdict**’ which clearly indicates the awaiting verdict of Abdul *Quader Molla*- and his such audacious utterance about the *sub-judice* matter is nothing but clear threat and interference to the authority and independence of this Tribunal and his such threat certainly constitutes contempt of this Tribunal. We have also watched the video footage of RTV and ATN News in the Tribunal and found the remark uttered by the Contemnor.

25. Contemnor Mr. Selim Uddin by filing further written explanation, after initiating contempt proceeding, attempted to ‘justify’ his conduct, although he begged unconditional apology together. On the date of hearing in open court we have watched the video clippings on the public meeting of JEI held on 04 February 2013 where the contemnor Mr. Selim Uddin and Mr. Hamidur Rahman Azad are seen to have made offending remark and speech and threat not to give verdict against *Abdul Quader Molla*. The clippings have been provided with by various TV Channels on asking by the Tribunal, for appraisal of the matter in issue.

26. It appears that contemnor Mr. Selim Uddin, in the name of freedom of speech threatened the rule of law and lawful authority of the Tribunal. Even he, by his words uttered in public meeting termed the Tribunal a ‘controversial’ one. By such utterances he clearly intended to attack and disparage the lawful authority of the Tribunal. This is seriously contemptuous indeed.

27. The utterances and the way the contemnor Mr. Selim Uddin made it in public perceptibly intended to disparage the lawful authority and to demean the dignity of the Tribunal in the mind of public and it was done aggressively and thus the contemnor Mr. Selim Uddin cannot be absolved of the responsibility of committing the offence of ‘contempt’. However, after placement of submission by the engaged counsel, the contemnor Mr. Selim Uddin with the leave of Tribunal begged unconditional apology folded hand expressing

repentance and submitted that he always maintains high respects for the Tribunal, its Judges and the proceedings going on before it and he did not intend to demean the dignity and authority of the Tribunal by making alleged statement and he is repented for his conduct.

- 28.** In the foregoing discussion we find that the Contemnor Hamidur Rahman Azad MP has deliberately flouted the order of this Tribunal by not appearing before us to explain his conduct. Still we are competent to verify his remark he made in the public meeting on.04-02-2013 which was published in “the Daily Prothom Alo” quoted the Contemnor Hamidur Rahman Azad MP as saying ‘**This Tribunal can not exist any more**’. Now question arise who is he to dictate about the fate of the Tribunal and who has given him blanket authority to utter such dictatorial speech. Such remarks definitely whipped up the general mass to go against the creation of such Tribunal as well as flared up destructive activities centering the trial pending before the Tribunal. It is the sovereign parliament who is the absolute authority to decide the existence of the Tribunal not it depends on the whim of any individual like the Contemnor and his utterance constitutes contempt of the Tribunal.

A part from that, it has been proved that this Contemnor was well aware of the contempt proceeding from its very inception by engaging learned Advocates as we have elaborately discussed earlier and had it been the fact we can unequivocally state that he has intentionally disobeyed the order and direction of this Tribunal that also constitute contempt of the Tribunal.

- 29.** It is found proved that Mr. Hamidur Rahman Azad, M.P and a member of Central Executive Council of Jamat E Islami made such threatening and offending words tending to create disparaging notion in the mind of public. Two other contemnors are in responsible position of the political party [JEI] they belong. The video clippings[obtained from TV channels for Tribunal’s perusal] of the alleged public meeting where two contemnors Mr. Hamidur Rahman Azad, M.P and Mr. Selim Uddin are found to have made speech at the same public gathering and allegedly uttered such extremely offending words amounting to threat to rule of law and the authority of the Tribunal. The video clippings were displayed in open court, during hearing when contemnor Mr. Selim Uddin remaining present in the court room also watched it.
- 30.** A press release has been published in ‘the Daily Star’ on.05-02-2013 under the caption “Jamat warns of Civil War” made by the Contemnor no.3 Rafiqul Islam Khan, Acting Secretary General of Jamat-E-Islami who quoted “**Don’t**

push the country in to civil war by delivering verdicts against our leaders. If anything happens to Quader Molla, every house will be on fire “.

- 31.** On the plain reading of the remark so made by the Contemnor it goes without saying that a vile attack has been made against the tribunal about its pending case openly pointing to the case of *Abdul Quader Molla*. The said remark was made by the Contemnor on 04-02-2013 when the judgment of Quader Molla was yet to delivered –though it was published on the next day i.e. on 05-02-2013 in ‘the Daily Star’. The remark of the Contemnor as quoted above is direct threat to the entire judicial process being proceeding against the leader of Jamat-E-Islami facing trial as well as Abdul Quader Molla. By uttering such remark the contemnor incites and terrorizes his fellow member against the entire judicial system. After publishing the said news report in ‘The Daily Star’ dated.05-02-2013 since he did not publish any rejoinder we find that the Contemnor stand by such report.
- 32.** Mr. Rafiqul Islam Khan by making above press release patently threatened not to deliver verdict against their leader. His statement is patently susceptible to wage ‘civil war’. The remark “**every house will be on fire in the event of verdict against Quader Molla**” not only aggressively obstructed and interfered subjudice matter before the Tribunal it caused serious threat to public tranquility too through out the country.
- 33.** A part from that, it has been proved that this contemnor was well aware of the contempt proceeding from its very inception by engaging learned Advocates as we have elaborately discussed earlier and had it been the fact we can unequivocally state that he has intentionally disobeyed the order and direction of this Tribunal that also constitute contempt of the Tribunal. After publishing the said news report “ in the Daily Star ‘ since he did not publish any rejoinder we find that the Contemnor stand by such report.
- 34.** On cumulative evaluation of above comments and statement we are convinced to conclude that the contemnors knowingly indulged in conduct by making intimidating and offending comment in public with a threat to wage civil war and also by creating a climate of terror causing a real and substantial risk of prejudice and obstruction to the proceedings before this Tribunal. The contemnors belong to Jamat E Islami, a political party. But we fail to understand as to on what logic and authority it preferred violent and aggressive activities in taking stand against the subjudice proceedings. A civilized person should not have opted such barbaric and uncivilized way and pattern of

expressing own view. It is generally considered badly chosen to publicly comment on cases *subjudice* and can even be an offence in itself, leading to contempt of court proceedings.

(i). Right of Free Speech & Public Interest'

35. The right of free speech is guaranteed by the Constitution, true, but must be properly guarded but nevertheless, it is recognised that it must not be abused or be permitted to destroy or impair the efficiency, fairness, image and public confidence and respect therein. It will be worthy to remember the comment of **Justice Black** in dissenting judgment in **Dennis Versus US** (1951)341 US.

“There comes a time when even speech loses its constitutional immunity. Speech innocuous one year may at another time fan such destructive flames that it must be halted in the interests of the safety of the Republic. When conditions are so critical that there will be no time to avoid the evil that the speech threatens, it is time to call a halt. Otherwise, free speech which is the strength of the Nation will be the cause of its destruction...”

36. Transparency in functioning of every limb of democracy is not only desirable but also imperative because it adds to the credibility of the system and inspires confidence of the people. The strength of the judiciary lies in the confidence and respect of the people in the justice delivery system. According to Section 6(2) of the Act of 1973 the Tribunal is an independent judicial forum and shall ensure fair trial. In doing so the Tribunal is mandated to provide all recognised right of defence to the person accused before the ICT. Accordingly the Tribunal is going ahead with the justice process in accordance with law and also by ensuring highest potential rights of defence. The Act provides provision of preferring appeal against the verdict of the Tribunal before the Appellate Division, the highest judicial forum of the country.

37. The alleged comments and statement that have been made in public and by making press release by the contemnors should not be guarded by the right to freedom of speech as it relates to sensitive subjudice criminal proceedings to which the mass people of the country and the international community as well have been eying very closely. Their conduct was not in the interest of public. Rather it was derogatory to the notion of rule of law.

38. What is ‘free speech’? According to the celebrated English jurist Lord Denning it means that everyone should be free to think his own thoughts and to have his own options and to give voice to them so long as he does not of his neighbour or incite anyone to violence[**Sir Alfred Denning, Freedom Under**

The Law, Hamlyn, London, 1949, at 35]. How does one define free speech? Perhaps the shortest definition would be the expression of thought through the spoken word. There is no doubt that freedom of expression is one of the hallmarks of a democratic society, and has been recognised as such for centuries. [**Australian Law reform Commission, Contempt** (Report 35, 1987) at para 242].

39. The inciting and inflammatory words uttered in public speech and by issuing press release by the contemnors do not appear to have been done ‘**reasonably and in good faith**’ and in the course of any discussion or debate held for any genuine purpose in the public interest. The contemnors in a most arrogant way and language attacked the lawful authority of the Tribunal by holding out threat to wage ‘civil war’. Was it a political speech, for any genuine purpose in the interest of public? Rather such inciting and offending speech instantly created havoc and halted the tranquility throughout the country and it was done just a day before the Tribunal was about to pronounce its verdict in the case of *Abdul Quader Molla*.

40. **Lord Denning MR** in *London Artists Ltd v Litter* said that there is ‘no definition in the books as to what is a matter of public interest’. Nevertheless he went on to describe it as ‘whenever, a matter is such to affect the people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or others; then it is a matter of public interest on which everyone is entitled to make a fair comment.[**1969, QB 2 391**].

41. But the alleged utterance of words by the contemnors in their offending speech made in public and in a press release was aimed to obstruct proceedings and delivery of verdict in a particular case pending before the Tribunal by creating a climate of horror and havoc. The contemnors’ utterances were in no way related to ‘public interest’, and it intended to cause prejudicial interference to court’s proceedings.

42. Their conduct through the alleged remarks and statement made in public has reasonably caused prejudice to the justice process and erosion of confidence of public too. Nobody should fail to remember that the Tribunal constituted under the legislation enacted in the parliament is quite independent judicial body dealing with the trial of international crimes. Therefore, in the name of freedom of speech nobody should feel inspired and excited to make statement of such nature in public intimidating the notion of rule of law and authority of

court of law that creates debate and reasonable question in the mind of public as to fairness, dignity, image and independence of the Tribunal.

43. It may be appropriate to note that the Apex Court of India in the case of **Ministry of Information Vs. Cricket Association** reported it **1995 (2) SCC 161** indicated what freedom of speech and expression means. It has been held that such freedom means right to express one's convictions and opinion freely by word of mouth, writing, picture or any other manner addressed to eyes. Right to freedom of speech as guaranteed in our constitution is not absolute unfettered and it is to be exercised with some restriction and caution. Fairness of a trial process or criminal judicial proceedings is a notion to be established in the mind of public and be maintained by the tribunal, a court of law.
44. In the name of politics and to save a party man facing trial from legal punishment, no one, on any consideration, cannot have right to held out threat to or incite waging civil war in the event of any punishment to be awarded by a lawfully constituted Tribunal. Holding out threat on 04th February 2013, prior to the date of delivery of judgment in the case of Abdul Quader Molla is a patent obstruction to justice and *subjudice* matter.
45. We reiterate that in the name of right to freedom of speech, no one, what ever political ideology he belongs, cannot have such unfettered right to held out threat and incitement of waging civil war aiming to obstruct the *subjudice* affairs of the Tribunal. A citizen living in the territory of Bangladesh must act obeying its constitution and law of the land. Even, it appears that two leaders of Jamat E Islami as mentioned above by their unlawful inciting remarks, exceeding the minimum norm of civility and sense they have shown tremendous rudeness to term the Tribunal as illegal and disputed Tribunal'. Such remark is extremely disparaging disrespecting and affecting independence and image of the Tribunal
46. The conduct of contemnors by making such extremely aggressive and offending remarks should not be dealt with any degree of leniency, for the sake of upholding the notion of rule of law and unhindered administration of justice, as the same constitutes the offence of clear contempt. The Tribunal which is a lawfully constituted judicial forum is burdened with the responsibility to ensure proper administration of justice. In carrying out this function, the Tribunal has to ensure that dignity of the Court, process of Court and respect for administration of justice is maintained. Violations which are likely to impinge upon the faith of the public in administration of justice and the Court

system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith.

(ii). Flagrant Disobedience of Tribunal's Order by the Two Contemnors

47. Contemnor Mr. Hamidur Rahman Azad and Mr. Rafiqul Islam Khan, instead of requiring their personal appearance as directed appeared before their engaged counsels and prayed adjournment on ground of 'unavoidable situation'. In this way adjournment for three occasions has been prayed and the Tribunal considered it and finally their engaged counsels prayed to withdraw *vokalatnama*. The Tribunal allowed it and inevitably issued warrant of arrest to secure their appearance. Eventually, the police by submitting a report in execution of warrant of arrest informed the Tribunal that they could not be arrested and they would be produced when the police would be able to cause their arrest. In this circumstances the Tribunal, after submission of written explanation submitted only by Mr. Selim Uddin decided to initiate contempt proceeding under section 11(4) of the Act of 1973 as the explanation has not been considered satisfactory. The Tribunal, considering the conduct of two other opposite parties also ordered for initiation of proceeding against them as well.
48. Contemnor Mr. Hamidur Rahman Azad, M.P and Mr. Rafiqul Islam Khan did not turn up despite specific direction and order to explain their conduct. Even they could not be arrested by police in execution of warrant of arrest issued. But they are found quite visible in public even after taking cognizance of the matter and initiating proceeding and thus naturally they are very much aware of the proceeding and Tribunal's order. Therefore, they must face the consequences of such flagrant violation of orders of the Tribunal causing discernible disrespect to the course of administration of justice which cannot be permitted. Contemnor Mr. Hamidur Rahman Azad who is a member of parliament was expected to know the constitutional scheme of the country and that the orders of the Court have to be obeyed.
49. The Tribunal notes that the act of flouting and disobedience of order of a court of law itself contemptuous. It appears that for no valid reason contemnor Mr. Hamidur Rahman Azad, M.P and Mr. Rafiqul Islam Khan prayed adjournment for three times by engaging their counsels without securing their personal appearance at any stage. After withdrawing *vokalatnama* by their engaged counsels none of them made any lawful step to require their appearance before the Tribunal as directed. They could have appeared even after issuance of warrant of arrest. Surprisingly police also could not cause their arrest, according

to the execution report. It is more astonishing to note that despite such execution report showing them absconded the contemnor Mr. Hamidur Rahman Azad, M.P and Mr. Rafiqul Islam Khan have been found making speech and statement in public.

50. But Mr. Hamidur Rahman Azad M.P and Mr. Rafiqul Islam Khan clearly attempted to dodge the orders of the Tribunal which is derogatory to the very dignity of a court of law and administration of justice. A person who attempts to salvage himself by showing ignorance of the Court's order, of which he quite clearly had the knowledge, would again be an attempt on his part to circumvent the process of law.

(iii). Tendering Apology by the contemnor Selim Uddin

51. Contemnor Mr. Selim Uddin by filing written explanation tendered apology although he attempted to 'justify' or 'explain' his conduct together. Apart from this, Mr. Selim Uddin with the leave of Tribunal has tendered 'unconditional apology' for his conduct expressing that he did not intend to demean the authority of the Tribunal. It is to be noted that tendering an apology is not a satisfactory way of resolving contempt proceedings.

52. An apology tendered being *bona fide* and preferably unconditional would normally persuade the Court to accept such apology, if this would not leave a serious scar on the dignity/authority of the Court and interfere with the administration of justice under the orders of the Court. But in the matter in hand we do not consider that the apology tendered by Mr. Selim Uddin was 'unconditional', particularly in light of submission extended by his learned counsel Mr. Tajul Islam and contentions narrated in his written explanation. Now, all that we have to examine is whether the apology tendered is *bona fide* in light of the attending circumstances and whether it will be in the interest of justice to accept the same.

53. We reiterate the settled principle that one who tenders an unqualified apology would normally not render justification for the contemptuous conduct. It is conceived that in any case, tendering of an apology is a weapon of defence to sluce the guilt of offence by contemnor. While considering the apology and its acceptance, the Court inter alia chiefly considers the conduct of the contemnor prior and subsequent to the tendering of apology. In the case of **Sanjeev Datta & ors. [(1995) 3 SCC 619]**, the Court while declining to accept an apology tendered by the contemnor observed that

“Any conduct that is designed to or is suggestive of challenging the crucial balance of power devised by the Constitution, is an attempt to subvert the rule of law and is an invitation to anarchy. The institution entrusted with the task of interpreting and administering the law is the judiciary, whose view on the subject is made legally final and binding on all till it is changed by a higher Court or by permissible legislative measures. Under a constitutional government, such final authority has to vest in some institution otherwise there will be a chaos.”

54. With these observations, the Court declined to accept the apology. In the case of **Mohd Aslam v. Union of India [(1994) 6 SCC 442]** observed that

“Respect for law and its institutions is the only assurance that can hold a pluralist nation together. One should ensure respect for law as its breach will demolish public faith in accepted constitutional institutions and weaken the peoples’ confidence in the rule of law. It will destroy respect for the rule of law and the authority of Courts and will thus seek to place individual authority and strength of principles above the wisdom of law.”

55. Therefore, administration of justice is a pertinent matter which cannot be ignored by the Court and the acceptance of apology tendered by the contemnor would amount to establishing a principle that such serious violations would not entail any consequences in law, particularly when such apology tendered is not ‘unconditional’. Under some circumstance, accepting mere ‘apology’ may encourage repetition of such offences, rather than discouraging or preventing others from committing offences of similar nature in future.

VIII. Conclusion

56. Though at the fag end of the submission the learned Advocate has tendered unconditional apology for Contemnor no.1 but we find such contention of the learned Advocate has vitiated by the doctrine of approbation and reprobation and we firmly deprecate such submission and rejecting the reply he submitted as the Contemnor no.1 while apologized before this Tribunal has never concurred with the clarification his learned Advocate made before this

Tribunal . So we have no hesitation to state that the learned Advocate made untrue statement in justifying the basis of remark so uttered by the Contemnor on.04-02-2013 which is actually not his contention.

57. We at the same time only take in to account of the unconditional apology tendered by the Contemnor himself before this Court. But the gravity of his remark has obviously shaken the dignity and independence of this Tribunal. And his remark certainly constitutes and proves contempt of this Tribunal beyond any reasonable doubt but since he begged unconditional apology to this Tribunal we take lenient view in punishing him.

58. Contemnor Hamidur Rahman Azad MP is a public representative having minimum acumen about the Judiciary and Law of the land. But his utterance in a public meeting dated.04-02-2013 and his subsequent action in not appearing before the Tribunal in spite of taking adjournment to that effect in several occasions certainly constitute and prove contempt of this Tribunal beyond reasonable doubt.

59. Contemnor Rafiqul Islam Khan-is now holding the topmost position in absence of the leader who has been facing trial before this Tribunal. The personality in such stature has castigated the Tribunal and made open threat to the Adjudicators of the Tribunal in a particular case as well as threatened to wage civil war which are nothing but tantamount to provoke and incite anarchy in the country and it certainly constitutes the offence of contempt of this Tribunal beyond reasonable doubt.

60. Keeping the settled principle as discussed aforesaid we are not persuaded not to accept the apology tendered by the contemnor Mr. Selim Uddin. But however, his subsequent conduct and tendering unconditional apology in open court with repentance may be considered as factors in awarding punishment.

61. Having considered the entire spectrum of the matter and in view of discussion made above we, therefore, hold all the contemnors i.e. **(1)** Mr. Hamidur Rahman Azad, M.P and a member of Central Executive Council of Jamat E Islami and **(2)** Mr. Selim Uddin, Assistant Secretary General of Jamat E Islami, Dhaka City guilty of the offence of contempt by making offending statement and remarks in public gathering and **(3)** Mr. Rafiqul Islam Khan, Acting Secretary General of Jamat-E-Islami guilty of the offence of contempt by making threatening statement in a press release which is punishable under section 11(4) of the Act of 1973.

Hence it is**Ordered**

That in result of the above discussion contemnor (1) **Mr. Selim Uddin**, Assistant Secretary General of Jamat E Islami, Dhaka City is hereby punished and awarded sentence of simple imprisonment till rising of the court with a fine of Taka One (01) thousand under section 11(4) of the Act of 1973. The fine so imposed should be deposited through 'chalaan' within seven days from today with direction to inform the compliance to this Tribunal through its Registrar. In the event of default, he [Selim Uddin] shall be liable to undergo simple imprisonment for a period of two weeks more.

Contemnor (2) **Mr. Hamidur Rahman Azad, M.P [absconded]** and a member of Central Executive Council of Jamat E Islami and (3) **Mr. Rafiqul Islam Khan [absconded]**, Acting Secretary General of Jamat-E-Islami are hereby punished and awarded the sentence of simple imprisonment of three [03] months together with a fine of Taka Three (03) thousand each under section 11(4) of the Act of 1973. In the event of default, each of them shall be liable to undergo simple imprisonment for a period of two weeks more.

Let warrant of commitment on a sentence of simple imprisonment be issued accordingly upon (1) Mr. Hamidur Rahman Azad, M.P and a member of Central Executive Council of Jamat E Islami and (2) Mr. Rafiqul Islam Khan, Acting Secretary General of Jamat-E-Islami and be sent to the Inspector General of Police together with a copy of this decision/order for necessary compliance.

The sentence so awarded shall come into effect from the date of causing their arrest or from the date of their surrender before this Tribunal [ICT-2] whichever is earlier.

Registrar, ICT is directed to send a copy of the decision to the Secretary, Bangladesh Parliament for information and necessary action

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Judge Md. Shahinur Islam, Member