

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No. 9587 of 2010

IN THE MATTER OF :

An application under Article 102 of the Constitution
of the People's Republic of Bangladesh;

And

IN THE MATTER OF

**Human Rights and Peace for Bangladesh
(HRPB) and others.**

.....petitioners

-Versus-

Bangladesh represented by the Secretary, Ministry
of Health and Family Welfare, Bangladesh
Secretariat, P.S. Shahbag, Dhaka, Bangladesh and
others.

.....Respondents

Mr. Manzill Murshid, Advocate.

.....for the petitioners

Mr. Abdul Baset Majumder with

Mr. M. Sayed Ahmed, Advocate

.....for the Respondent No. 5

Mr. A. B. M. Altaf Hossain, D.A.G with

Ms. Yehida Zaman, A.A.G

.....for the Respondents

Judgment dated 19.02.2012

Present:

Mr. Justice A.H. M. Shamsuddin Choudhury

And

Mr. Justice Jahangir Hossain

A. H. M. Shamsuddin Choudhury, J:

The Rule under adjudication, issued on 02.12.2010, was in following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why direction should not be given upon the respondents to take necessary steps to ensure the better medical treatment of the patients in the government hospital and way a direction should not be given upon the respondents not to further increase the user fees in the government hospital and /or pass such other or further order or orders as this Court may deem fit and proper.”

The averments figured by the petition are, briefly, as follows:

The organization Human Rights and peace for Bangladesh (HRPB) is a non profitable registered organization the objects of which is to uphold human rights and to work for the poor people, to give legal support to the helpless people, and to build up awareness amongst the people about their rights etc.

The petitioners are practicing lawyer of this Hon'ble Court, human rights activist and conscious citizen of the country. They are seeking direction upon the respondents to stop distribution of user fees amongst the Doctors, Nurses and the employees in the government hospitals and to ensure the better medical treatment for the patients in all government hospitals. The petitioners also seek to bring this application by invoking Article 102 of the Constitution as public interest litigation.

The matter involves public importance. As per Article 32 of the Constitution the Peoples' right to life is guaranteed as a fundamental right. But by way of creating some obstructions medical treatment in the government hospitals, are being denied. Moreover Article 11 of the Constitution of the Republic speaks of the peoples right to medical treatment. So the authorities can not obstruct this right. Rather it is the duty of the government to give full support for arranging better treatment in the government hospitals. The user fees are being increased time to time. Not only that, after collecting the user fees from the patients, the hospital authorities are distributing the fund amongst the doctors, nurses and employees of the hospitals, which is illegal and without lawful authority. The affected peoples are unable to come to enforce their fundamental rights, hence the petitioners move this Public Interest Litigation (PIL) before his Hon'ble Court.

The following reports were published in different newspapers on different dates:

A meeting was held on 22.07.2010 with Hon'ble Minister of Ministry of Health and Family Welfare in the chair, in which it was decided to distribute 50% of the user fees collected from the hospitals, except upazila hospitals, amongst the employees of the hospitals and 60% of them from the upazila hospitals will be distributed amongst the employees of the upazila hospitals. The Ministry of Health and Family Welfare published a notification on 10.09.2010 in which some user fees have been increased. Earlier the Ministry of Health also issued a notification on 02.03.2010 in which users fees of 470 items have been fixed though earlier no user fees have been collected from the patients in the government hospitals.

The respondents are the experienced public servants and very much aware of the rules and instructions of the government. The fact that user fees are being collected from patients are not beyond the knowledge of the respondents.

The respondents are duty bound at all time to serve the people and to perform public duties. But they have failed to perform their duties because they have failed to take steps to ensure better treatment for the citizen of the country.

The poor people of our country are unable to get medical treatment from the private hospitals and clinics. Normally most of the poor people rush to the government hospitals for their medical need. It is difficult for them to pay user fees.

The petitioners have filed supplementary affidavit figuring the following statements:

The instant Writ Petition was filed by the petitioners as public interest litigation.

On 02.12.2010 after hearing the parties the Hon'ble High Court Division was pleased to issue Rule Nisi calling upon the respondents to show cause as to why direction should not be given upon the respondents to take necessary steps to ensure better medical treatment for the patients in the Government hospital and why a direction should not be given upon the respondents not to further increase the user fees in the government hospital.

At the time the instant writ petition was filed, the collection of user fees from the patients in the hospital was not challenged inadvertently. But such kinds of collection of user fees from the patients are not covered by any law. Moreover it is contrary to the provisions of the Constitution of Bangladesh. Hence it is liable to be declared illegal and without lawful authority.

It is in the interest of justice that in order to meet the purpose of the writ petition and effective solution of the matter, it is necessary to issue a further Rule Nisi on the following terms:-

“Issue a Rule Nisi calling upon the respondents to show cause as to why collection of user fees from the patients in the government hospital/clinic, should not be declared illegal and without lawful authority.”

The respondent No. 5 has filed an affidavit in opposition figuring the following statement:

Although medical treatment may qualify as a fundamental right, entitlement to “free” medical treatment is not a right guaranteed under the constitution of the

People's Republic of Bangladesh. Therefore, mere charging of user fees for patients does not amount to violation of the fundamental right to medical treatment. Moreover, user fee is only charged from a special section of the society who are well off and can afford to pay user fees. People who cannot afford to pay user fees, can obtain free medical treatment in government hospitals and take benefit of all hospital facilities, such as X-Ray, ECG, Pathology etc, free of cost. User fees are being collected in hospitals of the Indian Sub-continent since 1937, the amount of which have been reviewed and increased from time to time depending on the rate of inflation. Collection of user fees is still a common practice in countries like India, Pakistan, Srilanka, United Kingdom, Australia and some Latin American countries. The Government of Bangladesh has permitted collection of user fees and distribution of the same among the employees of government hospitals under various memos. As such, the collection of user fees and distribution of the same among hospital employees is not an illegal or arbitrary which has been sanctioned and reviewed by the government from time to time.

Information given in the cited reports are incorrect and improper.

It is stated in this regard that the charging of user fee does not have any effect upon anybody's accessibility to medical treatment since a separate track exists in every government hospital for people who cannot afford to pay user fees to enable them to obtain medical treatment free of cost. The track whereby user fees is charged for medical treatment is only availed by people who can afford to pay user fees. As such, the charging of user fees does not amount to interference with anyone's fundamental rights to medical treatment.

User fee is used as a risk-allowance for the doctors and technicians who work in such departments, and since such doctors and technicians are exposed to high radiation due to the nature of their work such allowance is a legitimate payment. Since the user-fees is utilized for maintenance of very sophisticated machine in government hospitals, if the same is not available, providing of such services would be seriously hampered and the patients would in effect suffer gravely by having to go to much more expensive private hospitals.

Whereas almost 90% of the treatment is free in government hospitals, only in very limited cases user-fees are charged from the patients who can afford it and hence the same cannot be termed as a violation of the fundamental rights.

User fees contribute to better and efficient service in government hospitals as the extra money may be utilized to employ more staff. Furthermore, the prospect of receiving a share of the user fees as a motivation for the hospital employees who, then, work more diligently. As such, healthcare in government hospitals improves due to distribution of user fees among the hospital employees.

The collection of user fees and distribution of the same among hospital employees has been sanctioned by the government who regulates the said practice and reviews it from time to time and as such collection and distribution of user fees is not illegal.

As the Rule matured, Mr. Manzill Murshid, learned Advocate for the petitioner submitted that this money is being realized for a long time without any legislative authority whatsoever.

Mr. Abdul Baset Majumder, learned Advocate submitted that there is an executive order of 1954 which is annexed at page 15 of the affidavit in opposition under which this money is realized. However he admitted that there is no legislative authority to back up this realization.

For us, the only question is whether realisation of so-called user fees at the public hospitals are within lawful authorities.

It transpires from the affidavit in opposition that the so-called user fees are being distributed to such hospital personnel, including medics, who work in high risks areas, by, for example exposing them to radiations, and also for buying sophisticated medical appliances.

That may be it, but no fee can be levied on anyone without the authority of the Parliament.

As admittedly there is no legislative authority to back up this realization the same is certainly without lawful authority.

The Rule is therefore made absolute without any order on costs. The authorities are directed to stop collection of user fees at the government hospitals forthwith.
