



## Rabia Bhuiyan MP v. Ministry of Local Government and Rural Development, et al.

59 DLR (AD) (2007)

**Country:** Bangladesh

**Region:** Asia

**Year:** 2007

**Court:** Supreme Court - High Court Division

**Health Topics:** Chronic and noncommunicable diseases, Environmental health, Health systems and financing, Water, sanitation and hygiene

**Human Rights:** Right to a clean environment, Right to health, Right to life

### Facts

The Appellant, a former Member of Parliament, filed a writ petition in the High Court of Bangladesh against the Government and other public authorities for their failure to comply with the Environment Conservation Act 1995 and the Environment Conservation Rules 1997. The petition alleged that there was widespread arsenic contamination in tube wells across the country. The quantity of arsenic in the wells was much higher than the standard level mentioned in the World Health Organization (WHO) guidelines. Arsenic was a known carcinogenic and caused arsenicosis, which could be fatal. The Appellant argued that the contamination constituted a violation of the fundamental right to life under article 31 of the Constitution. Moreover, the Appellant claimed the Government had failed to take remedial measures despite the legal obligation to do so under article 18 of the Constitution (improvement of public health).

A number of people had fallen ill as a result of arsenic poisoning. Dhaka Community Hospital received the first patient with symptoms of arsenic poisoning in 1996. Despite warnings by a number of experts and reported cases of not less than 60 patients affected by arsenic, the authorities failed to take adequate steps to address the situation. At a regional conference held in Delhi, India in 1997, the problem was acknowledged and guidelines were published for the installation of tube wells. However, the guidelines were not properly adhered to and many tube-wells remained installed in contravention of the standards. Alternative water sources were not provided.

In 2004, the Government established the Bangladesh Arsenic Mitigation Water and Sanitation Project, which published documents acknowledging the problem. WHO estimated in 2004 that 30 million people were at risk of arsenic poisoning.

The Appellant sought, among other things, the sealing of the tube wells and testing of water quality. The High Court dismissed the petition ruling the Appellant had failed to point out any law or rule to allow for sealing. The Appellant appealed to the Supreme Court.

### Decision and Reasoning

The Court held that the Government and other relevant public authorities had a legal obligation to seal tube wells contaminated with arsenic and to test water quality in order to ensure the contents of arsenic in ground water did not exceed a particular quantity.

The responsibilities of the government to supply safe and clean drinking water were set out in a number of laws, both domestic and international. The Environmental Conservation Act and the Environment Conservation Rules provided that the Department of Environment was to take measures and to give necessary directions to any person to conduct drinking water quality surveillance programmes and submit a report and advise, or in appropriate cases, direct, every person to follow the standard of drinking water (s 4(2)(h)). The National Policy of Arsenic Mitigation 2004 and the Millennium Development Goals also established obligations of the government to take serious measures towards providing safe drinking water. Further, as per the Paurashava Ordinance, 1977 and Local Government (Union Parishad) Ordinance 1983, local bodies such as Paurashavas and Union Parishads were specifically mandated to prevent contamination of drinking water by continuously monitoring sources of water.

The Court also relied on the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Bangladesh ratified in 1998. Article 12 of ICESCR, in conjunction with General Comment 14 of the Committee on Economic, Social and Cultural Rights, laid down the obligations of State Parties under the Right to Health, which included access to safe and potable drinking water.

The Court held that non-compliance with statutory duties to ensure access to safe and potable drinking water constituted a violation of the right to life as guaranteed by articles 31 (right to protection of law) and 32 (right to life) of the Constitution read together with articles 15 (provision of basic necessities) and 18 (duty to improve public health). The Court noted that the right to life encompassed the protection and preservation of the environment, ecological balance free from air and water pollution, and sanitation, without which life could not be enjoyed. There was thus a constitutional imperative on the government, not only to ensure and safeguard a hygienic environment, but also to take adequate measures to promote, protect and improve both the man-made and the natural environment.

The Court issued directions to the government in the form of a continuing mandamus. In doing so, it placed reliance on *MC Mehta v. Union of India*, 1996 (6) SCC 12, and *Dr. Mohiuddin Farooque v. Bangladesh* 55 DLR 613. In both cases, the courts held that timely reports were to be filed with the Court in order to ensure the Government was complying with its orders.

The Government was directed to adopt the following measures:

(a) [Take] necessary and effective steps to implement the National Arsenic Mitigation Policy 2004 and the National Action Plan for Arsenic Mitigation;

(b) [Comply] with the relevant provisions of the Paurashava Ordinance 1977 and the Local Government (Union Parishad) Ordinance 1983 and other laws with respect to providing safe water supply;

(c) [Comply] with the Environment Conservation Act 1995 and the Environment Conservation Rules 1997;

(d) [Frame] rules for ground water management in accordance with the National Policy for Arsenic Mitigation 2004;

(e) [Raise] mass awareness of the dangers of drinking water from arsenic contaminated tubewells and of alternative sources of safe drinking water, inter alia, by disseminating such information through the national media, including BTV and Bangladesh Radio;

(f) [Expedite] the testing of tubewells across the country for arsenic;

(g) [Undertake] a phase-by-phase programme for sealing tubewells identified as being arsenic contaminated and for continuing to screen tubewells;

(h) [Ensure] that no further damage to human health is caused through the use of arsenic contaminated tubewells; and

(i) [Provide] a yearly report to this Court regarding steps taken to implement the Arsenic Policy 2004 and the Plan.

### **Decision Excerpts**

Given that the existing legal and policy framework imposes legal duties on various public authorities and on local government bodies to take measures to provide safe water to individuals and also establishes a framework for implementation of a programme to provide safe arsenic free water. Directions from the Court would provide a necessary catalyst to ensuring due compliance of such bodies with their statutory obligations and policy commitments. 59 DLR (AD) (2007), Para. 23.

[H]ygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environmental protection. 59 DLR (AD) (2007), Para. 25.

Promoting environment protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is a constitutional imperative of the State Government and the municipalities not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment. 59 DLR (AD) (2007), Para. 25.

