

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 1043 OF 1999

In the matter of:

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

-And-

In the matter of:

Bangladesh Legal Aid and Services Trust
and another
.....Petitioners.

-Versus-

Bangladesh, represented by the Secretary,
Ministry of Health and Family Welfare,
Government of People's Republic of
Bangladesh and others
.....Respondents.

Mr. M. I. Faruqui with
Mr. Md. Ruhul Quddus,

.....For the Petitioners.

None

..... For Respondents.

Heard on the 8.12.04, 12.12.04 and
Judgment on the 14th December, 2004.

Present :

Mr. Justice Shah Abu Nayeem Muminur Rahman.

And

Mr. Justice Moyeenul Islam Chowdhury.

Shah Abu Nayeem Mominur Rahman, J:

This Rule was issued upon the respondent Nos. 1-5 to show cause as to why they should not be directed (a) to take necessary steps and action to ensure that all licensed manufacturers of salt do produce, pack and sell salt with Iodine content conforming with the quality and standard as specified in the Iodine Diseases Prevention Act, 1989; (b) to revoke licences and take action against respondent Nos. 6-12 and other manufacturers of iodized salt, those failed to comply with the provisions as enumerated in the said Act; and (c) to identify the unlicensed and fake manufacturers of edible salt and to take action against those manufacturers as per provisions of the Act.

The Rule was made returnable within eight weeks from date. The rule was issued on 25.3.1999. It appears from the case record that the case was made ready for hearing on 30.12.01.

The respondent No.4 and respondent No.5 entered appearance by filing separate powers. No affidavit-in-opposition has been filed. No one appeared on behalf of the respondents to contest the Rule.

However the learned D.A.G. and the learned A.A.G. assisted the Court since required at the time of hearing of the rule.

The learned Advocate appearing for the writ petitioner, taking us through the writ petition and the Annexures thereto, submitted that the petitioner No. 1 is a non-profit NGO, providing legal assistance in protecting the legal rights of the people, and being concerned with the sale of edible salt without or inadequate iodine contents, which affects the ordinary people of this country causing Cretinism and Goitre, two deadly diseases, in

violation of the laws of the country, the petitioners moved this application and obtained the Rule.

It has been submitted that the respondent No. 1 through Ministry of Health and Family Welfare, responsible for overall public health including control of food, water and other health related commodities, failed to act as required under the relevant laws of the country. The respondent No. 2 is responsible for development of salt Industries and for that matter quality control of edible salt and has control over the administration of the Bangladesh Small and Cottage Industries Corporation, which is responsible for setting up of a large number of salt Industries, and the Respondent No. 4, the Bangladesh Standards and Testing Institution, is responsible for testing and quality control of, amongst others, iodized salt. Respondent No.3 is a statutory committee constituted under Section 3 of the Iodine Deficiency Diseases Prevention Act, 1989, with the object, amongst others, to issue licence for the salt manufacturers as per provisions of said Act, 1989 and the committee is headed by the Secretary of the Ministry of Health and Family Welfare, a senior Civil Servant of the country.

Respondent Nos. 6-12 are some of the manufacturers of the Iodized salt, whose product have been tested and found to be not at par as required by the law. Iodine is an essential micro nutrient for growth and development of human body and the human body requires iodine 3-4 grams and same is necessary for normal physical and mental development during the month before and soon after birth of a body. The development of the brain and nervous system, which controls physical ability of a person depends on the daily availability of iodine. Because of deficiency in the consumption of iodine the average prevalence of Goitre was found around 28.9% as per East Pakistan Nutrition Survey Report, 1962-64 and the reports on Nutrition Survey in the Rural areas of Bangladesh conducted in the year 1975-76 and 1981-82 revealed prevalence rate of 10.5%. The Survey report of 1993 reveals goitre rate around 47.1% and cretinism around 69% of the population of Bangladesh are because of biochemical iodine deficiency. The learned Advocate submitted that the disease cretinism is mental and physical retardation due to lack of thyroid hormone in infancy and this occurs due to deficiency of Iodine in the body and such iodine may be gathered in the body of a person through other sources but main avenue for getting iodine in the human body is iodized salt. The learned Advocate stated that for goitre disease the deficiency of iodine is primarily responsible. It has been submitted that the government decision banning on sale of edible salt without iodine has made it mandatory on the manufacturers to produce, distribute and sell only iodized salt in the market and for which the said Iodine Deficiency Diseases Prevention Act, 1989 has been promulgated. It has been further submitted that because of Iodine deficiency every year around 250,000 people are becoming mentally impaired and around 33,000 infants die within the 1st month of their life and around 41,000 still births occur and in general for want of iodine the I.Q. of person suffers.

Aforesaid Iodine Deficiency Diseases Prevention Act, 1989, hereinafter referred as Act, and the Iodine Deficiency Diseases Prevention Rules 1994, hereinafter referred to as the

Rules, provide certain duties upon the officers including the respondents no. 1 to 5 to ensure production and sale of proper iodized salt in the market. But it appears that the concerned officers as well as the manufacturers of salt are not discharging their respective duties and obligations in accordance with law and for which the required edible iodized salt is not found in the market in general and particularly in the Rural areas. Since respondent Nos. 1-5 are responsible for the control of manufacture and sale of edible iodized salt i.e. without their permission no edible salt can be brought to the market for sale, it is necessary to compel them to perform their respective functions properly and meticulously and they should ensure that manufacturers of salt do comply with the provisions of the said act and the defaulters are prosecuted as per law. Section-8 of the Act provides for inspection of the salt manufacturing factories, sale depots, godown, shops etc. and Rule-9 of the Rules, 1994, speaks about such appointment of inspectors and their working procedures. Section 2(a) of the Act gives the contents of the saleable edible iodized salt for its marketing. The consumer Association of Bangladesh collecting samples of iodized salt produced by 15 Manufacturers from the market got those tested by the Institute of Nutrition of Food and Science, University of Dhaka, and the result reveals that none of the iodized salt samples of the said 15 Manufacturers contained in the required percentage of iodine in the salt, subsequently, the petitioner No. 1 also collected samples of iodized salt produced by 12 different manufacturers in Bangladesh on random selection basis and those were tested in the Institute of Food, Science and Technology, an organ of B.C.S.I.R. Dhaka, which found that the iodine content in the salt samples were not up to the requirement and that the packaging were not as per requirements of the Act and the Rules; but those salt are being marketed without any check and control by the respondent nos. 1-5. Such failure on the part of the respondents in performing their respective duties and functions has caused apprehension in the mind of the petitioners and particularly considering the health hazard of the newly born babies, the petitioners have come up with this application to compel the respondent Nos. 1 to 5 to perform their statutory duties and obligations. The learned Advocate submitted that the National Salt Committee constituted under Section-3 of the Act (Respondent No. 3) appears to have failed to discharge its duty and obligations properly in monitoring as to whether the manufacturers of edible salt are complying with the provisions of the Act and it taking actions against the defaulting manufacturers, stockists and sellers as per provisions of the Act and that the respondents also jointly and individually failed to take reasonable care to maintain proper and adequate monitoring mechanism on the manufacturers of edible salt and the marketing of such salt and that the respondent Nos. 2, 3 and 5 are negligent in performing their statutory obligations as to the manufacture of iodized salt and in prosecuting the unlicensed and fake as well as defaulting manufacturers of iodized salt.

Mr. Adilur Rahman, the learned D.A.G. appearing on our request to assist the Court, submitted that since the respondents did not appear before this Court to answer the Rule, the allegations made against them in the writ petition cannot be resisted. He further submitted that in the interest of the health of the people of Bangladesh and for supply of iodine in proportionate ratio in the human body, the marketing of iodized salt should be

ensured and that for that matter writ petitioners have done a commendable job in taking up the issue and that respondent Nos. 1-5 need be given proper direction to perform their statutory obligations properly and diligently in the greater interest of the future generation i.e. newly born babies of the country. The learned D.A.G. further submitted that the direction sought for as indicated in the Rule are necessary and cannot be denied.

We have perused the application and considered the submissions of the learned Advocate for the petitioners and the learned D.A.G.

It appears that no one is against the rule. Rather the Rule has been issued as was felt necessary to require the persons concern [sic] to rise to the occasion and for that matter to compel them to act as required by the provision of the Act and the Rules; i.e. to compel them and to perform their statutory duties and obligations, which appear to be in the negative side at the present. The law requires production and marketing of iodized salt as per specification of Section 2(Ka) of the Act and the law has clearly barred manufacturing and sale of edible salt without Iodine. The manufacturers of non-iodized or sub-standard iodized salt violating the provisions of the Act and the Rules need be prosecuted as per law. It appears from the sections 4 and 6 of the Act, 1989, that the sale, distribution and exhibition of edible salt without iodine is a punishable offence/act and the sale of iodized salt in package should contain name of the manufacturers, the contents, date of package and the package number, the maximum retail price and a declaration that the iodine has been mixed with the salt proportionately in accordance with provision of the Act. Section 9 is the penal provision of the Act, which provides that if any person violates the provisions of the Act he may suffer imprisonment not more than three years and fine not more than Tk.5,000/- or both. The Rules, 1994, provide instructions as to packaging of iodine salt, the registration of manufacturers of Iodine salt; provision for cancel of registration, inspection of the manufacturing units and the requirement of sending samples of salt to the laboratories listed in the Rules, for analysis of the iodized salt. The functioning and duty of the National Salt Committee (to be appointed under the Act) and the authority to file case by the inspectors have been provided in the provisions of the Act and the Rules.

Considering the statements made in the application, submissions of the learned advocates and the materials on record, we find substance in the Rule. Since the respondents did neither appear to contest the rule nor controverted any of the statements of fact and allegations made in the writ petition, it is deemed that the allegations made against them are true and correct. Thus it appears that the respondent Nos. 1-5 are not performing their duties and obligations properly and diligently for which the general people in general and the infants in particular have been exposed to the Iodine Deficiency Diseases and the respondents are responsible for the consequences and therefore they need be directed to act in accordance with law and to be vigilant in performing their respective duties and obligations and as the respondent Nos. 6-12 appear to be defaulters and their produced edible salt do not contain proportionate quantity of iodine as required by the law and hence, they are liable to be prosecuted in accordance with law.

Accordingly, the Rule is made absolute without any order as to costs. The respondent Nos. 1-5 are directed to perform their respective functions ensuring compliance of the provisions of the Iodine Deficiency Diseases Prevention Act, 1989 and the Rules 1994 so that the iodized salt produced and marketed for consumption of the people do comply with the provisions of sections 2, 4 and 6 of the said Act, 1989 and the violators thereof be prosecuted under provisions of Section 9 of the said Act, 1989. They are further directed to ensure that the unregistered edible salt manufacturers are not allowed to produce, market and sell salt for human consumption and such unregistered manufacturers of salt be brought to book and be prosecuted in accordance with the provision of law. The respondent Nos. 2 and 5 are also directed to prepare and submit the list of registered manufacturers/producers of the edible iodized salt in Bangladesh and the respondent Nos. 2, 3 and 4 are directed to collect the samples of edible salt put in the market for sale for general consumption and to submit analysis reports of such salt twice a year i.e. for the period ending on 30th June and 31st December, respectively, to the Registrar, Supreme Court of Bangladesh, within 15 days thereafter without fail with a copy thereof endorsed to the respondent no. 3, who is directed to ensure taking of actions as per law against the defaulters on the basis of such reports. The analysis reports are to be submitted initially for five(s) years effective from 2005 A.D.

The learned Deputy Attorney General will also notify the respondents about the directions herein above given. Let a copy of this judgment and order be supplied to the learned Deputy Attorney General for compliance.

S. A. N. M. Rahman.

Moyeenul Islam Chowdhury, J:

I agree.

M. I. Chowdhury.