

judgment of the Administrative Appellate Tribunal and other connected papers.

6. There is no dispute that the petitioners rendered 9 years 9 months continuous service as work-charged basis and thereafter he was absorbed against regular substantive post in the Department without any break of service. It is also undisputed that one Md. Harun-ur-Rashid, UD Assistant of the same Department who rendered 6 years 2 months and 27 days of services on work-charged basis, on his retirement was given full pension benefits covering the period of his services as an work-charged employee but in the case of the petitioner the same benefit was denied. Thus there has been palpable discrimination in respect of the petitioner. The Administrative Appellate Tribunal further found that in case of one Shafiuddin Ahmed UD Assistant-cum-Typist of the same Department the authority concerned granted him full pension and gratuity benefits covering the period of his services on work-charged basis but in case of the petitioner a different view was taken and his pension and gratuity, etc. for the period of his service on work charged basis was denied most arbitrarily and without any lawful basis. Accordingly, Administrative Appellate Tribunal held that the petitioner was entitled to get pension and gratuity benefits covering the period of 9 years and 9 months on work-charged basis.

7. It appears that the Administrative Appellate Tribunal considered a number of government circulars issued by the Ministry of Establishment and the office orders issued by the PWD in this connection and arrived at the decision. There is no cogent reason to interfere with the same.

The leave petition is dismissed upon condonation of delay.

Ed.

#### APPELLATE DIVISION (Civil)

Md Ruhul Amin J	Rabia Bhuiyan, MP.....
MM Ruhul Amin J	.....Appellant.
Md Tafazzul Islam J	vs
<b>Judgment</b>	Ministry of LGRD & others..
August 27th, 2005	.....Respondents*

#### Environment Conservation Act (I of 1995) Section 4

#### Constitution of Bangladesh, 1972

#### Articles 15(a), 18(1), 31 & 32

It thus appears that the High Court Division fell in error in rejecting the writ petition summarily without at all considering the responsibilities of the respondents under the above law and Rules and their inaction. Directions from the Court would provide a necessary catalyst to ensuring due compliance of such bodies with their statutory obligations and policy commitments.

In these circumstances and given the extreme gravity of the situation and the serious effect of continuing arsenic contamination through drinking ground water on public health, this Court directs the respondents to fulfil their legal obligations to provide safe water to millions of persons across Bangladesh, in particular to stop human consumption of arsenic contaminated water, by adopting the following measures. ....(22, 23 & 29)

#### Constitution of Bangladesh, 1972

#### Articles 15, 18, 31 & 32

**Non-compliance with the statutory duties of the respondents to ensure access to safe and potable water constitutes a violation of the right to life as guaranteed by Articles 31 and 32 of the Constitution read together with Articles 15 and 18 of the Constitution.**

\*Civil Appeal No.118 of 1999.

(From the judgment and order dated 3-8-1999 passed by the High Court Division in Writ Petition No.2879 of 1999).

Hygienic 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. Therefore, it has now become a matter of grave concern for human existence. 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. ....(24-25)

Virendar Gaur vs State of Haryana (1995)2 SCC 577; MC Mehta vs Union of India 1999 (6) SCC 12; Dr Mohiuddin Farooque vs Bangladesh 55 DLR 613 and Vineet Narain vs Union of India AIR 1998 SC 889 ref.

Dr Kamal Hossain, Senior Advocate, instructed by Zahirul Islam, Advocate-on-Record—For the Appellant.

Ex-parte—The Respondents.

#### Judgment

**Md Tafazzul Islam J :** This appeal, by leave, is directed against the judgment dated 3-8-1999 passed by the High Court Division in Writ Petition No.2879 of 1999 rejecting the writ petition summarily.

2. The appellant filed the above writ petition in public interest, impugning the continued failure by the Government and other public authorities, in particular the respondent No.1, to comply with their legal duties under the existing laws including the Environment Conservation Act 1995 and the Environment Conservation Rules 1997 in taking action, *inter alia*, to seal tube-wells contaminated with arsenic and to test water quality and to ensure that the contents of arsenic in the ground water did not exceed a particular quantity as noted in the Environment Conservation Rules 1997.

3. In the writ petition it was, *inter alia*, stated that the writ petitioner, a former Member of the Parliament from Sonargaon area, a former Minister of Social Welfare and Women's Affairs, has undertaken various steps to alleviate social injustice; the Ministry, Local Government and Rural Development i.e. LGRD, the Ministry of Health and Family Welfare, Dr AZM Itlikhar Hussain, the Deputy Programme Manager Arsenic of the Ministry of Health, the Chief Engineer, Department of Public Health Engineering i.e. DPHE, the respondent Nos.1-4 respectively, being responsible for prevention of drinking of arsenic contaminated water, are involved with the projects for installation of tubewells for "safe water" throughout the country; UNICEF, the respondent No.5, supported safe-water supply programme in Bangladesh and provides technical resource supports and the programmes of UNICEF are implemented through the respondent No.4 under the respondent No.1; due to the alarm raised, arsenic test in this region at first began in West Bengal by UNICEF and subsequently arsenic testing also began in Chapainawabgonj where DPHE found tubewells contaminated with arsenic much above the standard level shown in the guideline of World Health Organisation, i.e. WHO, the respondent No.7; in the year 1996 Dhaka Community Hospital, for the first time, detected a patient with symptoms of arsenic poisoning and the Chairman of the said hospital, though took up the matter, did not receive any response from respondent Nos. 4 and 5; the respondent Nos.1, 2 and also Dr Deepak Bahcherya, the respondent No. 6, who is the Chief, WES section of UNICEF, in spite of numerous warnings given by experts did not take proper steps although the respondent No.1 certified a list of 59 districts showing that not less than 60 patients per thana of the above districts are affected by arsenic, a deadly carcinogen, which causes cancer; the respondent No.6, in a Regional Conference held at New Delhi in the year 1997, also recognised that arsenic is a disaster in Bangladesh; the respondent Nos. 4 and 5 though published guidelines for installing new tubewells in Bangladesh but new tubewells are still being installed in various



places without following the above guide-lines in spite of full awareness of the severity of arsenic contaminated water; respondents Nos.1 and 4 have failed to provide alternative water resource and further, the installation of new tubewells are continuing without tests and the people are still drinking arsenic contaminated water causing health hazards; the respondents and the concerned donor agencies though found extensive incidence of arsenic in the ground water, nevertheless failed to take necessary steps to prevent human consumption of such ground water and consequently millions of individuals across the country are being continuously exposed to arsenic poisoning through consumption of such poisoned water and accordingly, arsenic contaminated tubewells be sealed and emergency provisions of alternative sources of safe drinking water should be made.

4. The High Court Division though recognised that there is a horrible picture of arsenic contamination but nevertheless, rejected the writ petition *in limine* holding that the petitioner had failed to show that there was any 'law or rule to allow for sealing' and further noting, that the government is very much aware of this arsenic hazard in the country and they are taking steps in the matter.

5. Leave was granted on the submissions that the High Court Division fell in error in not appreciating the required involvement of respondent Nos.5 and 6, as has been enunciated in paragraph 2 of the writ petition details and the inaction of the respondents is leading to cancer and death due to drinking of arsenic contaminated water by members of the public and that the High Court Division fell in error in finding that the appellants could not show any law or Rule under which respondents could be prohibited from sinking tubewells without testing arsenic contents; the High Court Division fell in error in not considering that in terms of section 4 of the Environment Conservation Act, 1995 and the Rules framed thereunder the respondents could be prohibited from sinking tubewells without testing arsenic contents; in view of the admitted fact that tubewells are already identified as contaminated

with arsenic contents the respondents are under legal duty to completely seal up the contaminated tubewells to save the lives of millions and such inaction on the part of the respondents is violative of fundamental right guaranteed under the Constitution and the High Court Division also fell in error in not appreciating that the claim of the appellant is based on Articles 15(a), 18(1), 31 and 32 of the Constitution in breach of which the respondents are allowing the members of the public to continue to drink water contaminated with arsenic contents.

6. We have heard the learned Counsels and also perused the records.

7. The contents of various papers annexed with the writ petition show that over the past three decades, campaigns and technical support by international agencies to the Government of Bangladesh in the water and sanitation sector resulted in a shift from surface water to ground water consumption across the country with tubewells being installed across the country in order to provide access to ground water, for example, from 1972-1997, UNICEF, supported Government of Bangladesh in the installation of approximately one million public tubewells. The demand for drinking ground water expanded as a result of the concerted efforts of development agencies and Government of Bangladesh to avoid surface water sources in a campaign to reduce diseases caused by drinking contaminated surface water. However, no tests were carried out for arsenic contamination of the ground water and consequently, the people in Bangladesh, though concerned about the quantity of water available, were not concerned about its quality because it was taken as granted that ground water per se was safe and accordingly, they continued and still continue to drink such water with its serious impacts on public health. The papers as annexed show that the effect on health of arsenicosis is very severe and it involves three stages leading at the most serious stage to cancer, the PRIMARY STAGE includes" (i) blackening of some parts of the body or whole body i.e. melanosis and (ii) thickening and roughness of the palms and soles (keratosis); the SECONDARY

STAGE includes (i) white intermittent dots within the black area (leukonelanosis or rain drop syndrome), (ii) nodular growth on the palms and soles (hyperkeratosis) and (iii) swelling of the feet and legs (non-pitting edema) and also liver and kidney disorders; the FINAL STAGE includes gangrene of the distal organs or the parts of the body, cancer of the skin, lungs and urinary bladder and kidney and liver failure, the major sufferers in Bangladesh are within 16 to 40 years of age; most patients are identified while they are at clinical stage I or II and that children of 5-6 years are found to be affected by arsenicosis and experts noted that arsenicosis at least in the early stages, i.e. melanosis, can be reversed through drinking safe water at least to stop deterioration of the symptoms, if not ensure complete recovery. From the papers annexed it also appears that in the year 1993, public concern regarding the problem of arsenic in the ground water was first raised with reports of arsenic contamination in the ground water in parts of Bangladesh while a test was conducted by DPHE in Chapainawabganj District and by the year 1997, a regional conference was held in New Delhi to consider the effect of arsenic in the ground water and the said conference noted that arsenic in drinking water is a major public health hazard and should be dealt with as an emergency situation and recommended that immediate relief measures be provided through the supply of safe drinking water to all those affected and/or are at risk because of current exposure and the said conference further noted immediate relief measures that could be taken with priority provision of safe drinking water, in particular for "affected people" that is, those showing clinical manifestations and also for "people at risk" that is, those drinking arsenic contaminated drinking water but not necessarily showing symptoms of arsenic poisoning; it was also recommended that intensive awareness-raising activities should be undertaken immediately with regard to the negative health effects of drinking arsenic contaminated water in order to introduce preventive measures in cooperation with local bodies, NGOs and others and all avenues for increasing the awareness in this matter

should be utilised, including the mass media and the communication facilities of government/non-governmental organisations and specific posters, leaflets and other communication materials should be developed for this purpose.

8. From the contents of National Policy of Arsenic Mitigation 2004 and Implementation plan for Arsenic Mitigation, Annexure-A of the additional paper book, it appears that the Government of Bangladesh recognising the enormity of the arsenic crisis, established the Bangladesh Arsenic Mitigation Water and Sanitation Project supported by funds of over \$32.4 million which is still ongoing and subsequently.

9. The National Arsenic Mitigation Policy 2004, amongst others, provides as follows :

#### 1. Preamble

1.1 In Bangladesh surface water is abundantly available during the monsoon but it is scarce during the dry season. Ninety-seven percent of the population relies on ground water for drinking purpose. Ground water used for drinking in many areas if Bangladesh has been reported to have contamination by arsenic above the Bangladesh National Standard of 50 parts per billion (ppb). The percentage of contaminated tubewells in villages varies from more than ninety percent to less than five percent. Geographically, the tubewells in the delta and the flood plains regions, which comprise 72% of the land area, are more or less affected by arsenic contamination.

#### 3.0 Policy Statements.

Access to safe water for drinking and cooking shall be ensured through implementation of alternative water supply options in all arsenic affected areas.

#### 5.1 Public awareness

5.1.1. Raising awareness regarding the impact of ingestion of arsenic contaminated water;



5.1.2 Raising awareness about alternative arsenic-free safe water sources and mitigation options;

5.1.3 Raising awareness regarding remedial measures against arsenic poisoning; and

5.1.4 Raising awareness that arsenicosis is not contagious and that social exclusions is not justified.

## 5.2. Alternative Arsenic Safe Water Supply

5.2.1 Follow the Bangladesh Standards for drinking water as defined in 'Environmental Conservation Act 1995 and Rules 1997, Schedule-3'.

5.2.2 Give preference to surface water over ground water as source for water supply;

5.2.4 Ensure on an emergency basis, safe source of drinking water at a reasonable distance;

5.2.5 Assess the needs for water supply intervention based on the status of contamination at village level.

10. The Implementation Plan for Arsenic Mitigation 2004, amongst others, provides as follows:—

### 3.3.1 Emergency response.

The government shall focus on ensuring at least one safe source of drinking water within a reasonable distance on an emergency basis. This shall be termed as "Emergency Water Supply Programme in Severely Arsenic Affected Areas". In Upazilas, where screening has already been completed, the emergency water supply programme should be commenced without any further delay. In other areas this programme should start immediately after the screening is complete. For the emergency response improved dug well, pond sand filters will be tried first and deep tubewells following the protocols shall be adopted as the last option. The emergency response shall be completed in one year. The emergency response will take pressure off all stockholders and time will be available to develop a consi-

dered and comprehensive approach to the supply of safe water to the people in the longer term.

## 6.2 Ground Water Act

Ground water is a national resource and a suitable Ground Water Act should be enacted to control all activities regarding ground water, exploration, extraction and management.

11. From the contents of the draft of the "Proposed Arsenic Testing Guideline for new tubewells in Bangladesh" published by DPHE and UNICEF on 29-3-1998, which forms part of Annexure-G to the writ petition and starts from page 148 of the paper book of this appeal, at page 153 under the heading "Allocation of New tubewells" it will appear that thanas in which 1-40% of tubewells were affected, could be considered as moderate risk while thanas with more than 40% affected wells should be considered high risk areas. The National Arsenic Mitigation Policy itself noted that tubewells had been affected in 72% of the land area and that in some villages, upto 9% of tubewells were contaminated. From the contents of the "Assignment Report" prepared in December 1996 by Prof. JM Dave, short-term consultant of WHO, which forms part of Annexure-B to the writ petition and may be seen at page 71 of the paper book of this appeal, it appears that all districts adjoining the West Bengal border, except for a few in the northern area are affected and Panchagarh; Nawabganj; Rajshahi; Kushtia; Meherpur; Chuadanga; Satkhira; Narayan-ganj; Faridpur; Pabna and Bagerhat Districts were found to have a serious problem due to high arsenic concentration in drinking water of up to 1.75 mg/l and population of about 23 million is at risk due to the consumption of arsenic contaminated water. In the year 1998 it was estimated by WHO that some 23 million individuals in Bangladesh were at risk of arsenicosis but as it appears from the papers annexed in the writ petition, by 2004, that is in a further six years, the above figure had jumped to 30 million persons at risk. As is evident from Millennium Development Goals Progress Report 2005 prepared in collaboration by the Government

of Bangladesh and UN Agencies titled "Proportion of population with sustainable access to an improved water source", over the last few years thousands of tubewells have been found to be contaminated with naturally occurring arsenic at higher contents than WHO-recommended levels and if quality is taken into account, access to safe water drops to only 72% in rural areas. In spite of the fact that this is good coverage by developing country standards, it implies that 30 million people remain without access to safe water.

12. Further from the contents of Annexure-D of the additional paper book it will appear that as noted by a commentator, these figures amply demonstrate that the race against time has gone badly and the "arsenic mitigation project" has been hobbled by unforeseen problems resulting in death of poor Bangladeshis from unsafe water and with many thousands of wells not yet even tested for arsenic.

13. It also appears that the Government has also undertaken programme of the Millennium Development Goals, MDG, with support from international partners setting up a target for Bangladesh which is to have, by 2015, major proportion of people without sustainable access to safe drinking water and basic sanitation. The report, reviewing implementation of the MDGs by Bangladesh, further notes the following as a specific challenge, highlighting the importance of ensuring use of water from different on-arsenic contaminated sources and the importance of developing a proper ground water strategy.

Challenge 1: Ensuring 100 percent coverage of safe water

To be able to ensure nearly 100 percent coverage by 2015, at least 25 million people must gain access to arsenic-free, safe water over the next 10 years. This is a considerable challenge since at present there is no effective solution for communities which are highly affected by arsenic ..... communities and individuals will have to learn to use water from different sources for different purposes, if their water demands are to be met at viable cost.

.....There is a growing concern regarding the availability of ground water. Currently ground water is used widely for irrigation, leading to a lowering of the water table. A proper ground water strategy will be necessary to safeguard the resource.

14. It also appears that duties were imposed under existing laws on public authorities to take steps to seal arsenic contaminated tubewells and to provide for safe water supply. The local government bodies namely, Paurashavas and Union Parishads, have specific legal obligations to provide clean water supplies to the community. Under The Paurashava Ordinance 1977, all Paurashavas are responsible for providing safe water and promoting public health (sections 70, 73 and 74); the control, regulation and inspection of private sources of water supply (section 74(3)(c)) and taking measures to prevent the use of such water for drinking if it is unfit for consumption.

15. Under the Local Government (Union Parishad) Ordinance 1983, all Union Parishads are required; to carry out functions for the provision and maintenance of well, water pumps, tanks, ponds and other works for the supply of water (First Schedule Part I item (16)); to adopt measures for preventing the contamination of the source of water supply for drinking (First Schedule Part I, item (17)) to prohibit the use of water of wells, ponds and other sources of water-supply suspected to be dangerous to public health item (18) and to take any other measures likely to promote the welfare, health, safety of the inhabitants of the union or visitors (item 38); to authorise a complaint regarding the commission of the offence of using water for drinking from any source which is suspected to be dangerous to public health, and the use whereof has been prohibited under this Ordinance (Section 69, read with Third Schedule item (7)).

The responsibilities of the Government for the supply of clean and safe water to communities are clearly set out in a number of laws including the Environmental Conservation Act 1995 and the



Environment Conservation Rules 1997 which provide, *inter alia* :

- the Department of Environment is to take measures and to give necessary directions to any person to conduct drinking water quality surveillance programmes and submit report and advise or, in appropriate cases, direct, every person to follow the standard of drinking water (Section 4(2)(h), Act)
- for such a direction to provide for the closure, prohibition or regulation of 'any .....process', subject to certain procedures, provided that the DG may, in cases of urgency, instantly give necessary direction, if it appears that public life is about to be disrupted due to environmental pollution (Section 4(3)Act);
- for receiving information on application by persons affected from the pollution or degradation of the environment for remedying the damage and adopting any measures including holding public hearings for setting an application under this section (section 8 Act);
- for seizing any equipment if he had reason to believe that it may furnish evidence of the commission of an offence under the Act (section 10);
- for the formulation and declaration of environmental guidelines by notification in the Official Gazette for the control and mitigation of environmental pollution (section 13, Act);
- establishing a minimum standard for quality of water for consumption which provides for a maximum content of arsenic of 0.05 mg per litre (Third Schedule, item (kha). Environment Conservation Rules) of Addl. paper book of C.A.118 of 1999.
- for establishing a minimum standard for quality of water for consumption which provides for a maximum content of arsenic

of 0.05 mg per litre (Third Schedule item (kha) Environment Conservation Rules).

16. Further legislation has already been framed but not brought into force in the form of the Ground Water Management Ordinance 1985 (Ordinance No.27 of 1985) The preamble to this Ordinance states that it has been enacted for the purpose of managing the ground water resources for agricultural production and for matters connected therewith. The Ordinance provides for licensing of tubewells subject to prior inquiries regarding the aquifer condition of the soil where the tubewell is to be installed, the suitability of the site for installation of the tubewell and on satisfaction that the installation will not have any adverse effect on the surrounding area (section 5(5)(a). Further, National Arsenic Policy refers to the importance of establishing a regulatory framework for ground water management.

17. It also appears that under the International Covenant on Economic, Social and Cultural Rights 1966 (the Covenant), which was ratified by Government of Bangladesh in the year 1998, includes obligation to protect the right to health which includes to ensure access to safe and potable water.

18. In elaborating the meaning of the right to health as guaranteed in Article 12 of the Covenant, the UN Committee on Economic, Social and Cultural Rights has specifically interpreted the right to health as including the right to access to safe and potable water and in its General Comment No.14 on Right to Health (2000) at para 11 it has been provided as follows:

General Comment No. 14 para 11

Para 11 The Committee interprets the right to health as defined in article 12.1 as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, health, occupational and environmental conditions.

19. The Committee has further noted in paragraph 12 that the right to health contains a number of inter-related elements which relate to availability, accessibility, acceptability, quality which are as follows :

General Comment No. 14

Para 12. The right to health in all its forms and at all levels contains the following inter-related and essential elements the precise application of which will depend on the conditions prevailing in a particular State party:

(a) Availability : Functioning public health and healthcare facilities, goods and services as well as programmes have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors including the State party's developmental level. They will include however, the underlying determinants of health such as safe and potable drinking water.

(b) Accessibility : Health facilities goods and services (6) have to be accessible to everyone without discrimination within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

Non-discrimination : Health facilities goods and services must be accessible to all, especially the most vulnerable or marginalised sections of the population in law and in fact, without discrimination on any of the prohibited grounds (7)

Physical accessibility : Accessibility also implies that medical services and underlying determinants of health such as safe and potable water and adequate sanitation facilities are within safe physical reach including in rural areas.

Economic accessibility (affordability) Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households

(d) Quality : health facilities goods and services must also be scientifically and medi-

cally appropriate and of good quality. This requires, *inter alia*, safe and potable water and adequate sanitation.

20. The Committee has further discussed that the legal obligations on States (under para 33) to respect, protect, fulfil their duties to secure rights and that these include administrative, judicial and other promotional measures for realisation of rights. The committee further discusses at para 36 the importance of securing the right in national, political and legal systems and with respect to the obligation to fulfil notes that States are required to ensure equal access for all to the underlying determinants of health such as nutritiously safe foods and potable drinking water, basic sanitation and adequate housing and living conditions.

21. The Committee then goes on to specify the core obligations on the state imposed by the covenant and notes that these include at para 43(c) To ensure access to basic shelter, housing and sanitation and an adequate supply of safe and potable water.

22. It thus appears that the High Court Division fell in error in rejecting the writ petition summarily without at all considering the responsibilities of the respondents under the above law and Rules and their inaction.

23. 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 and such direction would include.

- to ensure compliance with the statutory duties as enumerated above
- to raise public awareness through dissemination through the national media, in particular BTV and Bangladesh Radio,



of the dangers of drinking arsenic contaminated water and

- to provide a six monthly report to this Hon'ble Court on the status of implementation of the policy and plan.

24. It also appears that non-compliance with the statutory duties of the respondents to ensure access to safe and potable water constitutes a violation of the right to life as guaranteed by Articles 31 and 32 of the Constitution read together with Articles 15 and 18 of the Constitution.

25. As it appears in the case of *Virender Gaur vs State of Haryana* (1995)2 SCC 577 at paragraph 7 it has been held that Article 21 protects right to life as a fundamental right, enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contravention or actions would cause environmental pollution, Environmental, ecological, air, water, pollution etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic 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. Therefore, it has now become a matter of grave concern for human existence. 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.

26. Regarding such directions from the Court in the nature of continuing *mandamus* to provide a necessary means for providing the public with information regarding the nature of implementation of the policy and plan as sought by the appellant during hearing, as it appears in the case of *Vineet*

*Narain vs Union of India* AIR 1998 SC 889 at paragraph 9 it has been held that the continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer. In view of the persistence of that situation it became necessary as the proceedings progressed to make some orders which would activate the CBI and the other agencies to at least commence a fruitful investigation. Merely issuance of a *mandamus* directing the agencies to perform their tasks would be futile and therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that monitoring by the Court could ensure continuance of the investigation. It was therefore, decided to direct the CBI and other agencies to complete the investigation expeditiously keeping the Court informed from time to time of the progress of the investigation so that the court retained *seisin* of the matter till the investigation was completed and the charge sheets were filed in the competent court for being dealt with thereafter in accordance with law.

27. Further, in the case of *MC Mehta vs Union of India* 1999 (6) SCC 12 para 2.4 the Supreme Court of India required submission of regular reports by a Committee established to inquire into incidence of vehicular pollution and compliance with court directions in this regard.

28. Moreover in the case of *Dr Mohiuddin Farooque vs Bangladesh* 55 DLR 613 at paragraph 15 the High Court Division had issued a direction requiring six monthly reports to be filed before the Court regarding compliance with its directions concerning prevention of vehicular pollution.

29. Accordingly, in these circumstances and given the extreme gravity of the situation and the serious effect of continuing arsenic contamination through drinking ground water on public health, this Court directs the respondents to fulfil their legal obligations to provide safe water to millions of persons across Bangladesh, in particular to stop human consumption of arsenic contaminated water, by adopting the following measures -

- taking necessary and effective steps to implement the National Arsenic Mitigation Policy 2004 and the National Action Plan for Arsenic Mitigation ;
- complying 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 ;
- complying with the Environment Conservation Act 1995 and the Environment Conservation Rules 1997 ;
- framing rules for ground water management in accordance with the National Policy for Arsenic Mitigation 2004 ;
- raising 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 ;
- expediting the testing of tubewells across the country for arsenic;
- undertaking a phase-by-phase programme for sealing tubewells identified as being arsenic contaminated and for continuing to screen tubewells ;
- ensuring that no further damage to human health is caused through the use of arsenic contaminated tubewells ; and
- providing a yearly report to this Court regarding steps taken to implement the Arsenic Policy 2004 and the Plan.

Accordingly, the appeal is allowed within directions as set out above. There is no order as to costs.

Ed.

# APPELLATE DIVISION (Civil)

Md Ruhul Amin J	Managing Director, WASA...
MM Ruhul Amin J	.....Appellant
Md Tafazzul Islam J	vs
<b>Judgment</b>	Md Ali and others.....
July 11th, 2005	.....Respondents*

## Constitution of Bangladesh, 1972 Articles 31 and 35

The question of malafide, being a question of fact, has to be alleged specifically. As it appears the respondent merely stated that he has come to learn that some interested quarters in order to frustrate the work and the contract at the instance of some corrupt party with malafide intention and without any committee evaluation or recommendation and without any reasonable cause or ground arbitrarily withdrawn the letter of intent which is interference with respondent's freedom of trade or business and the said letter disclosing no reason is malafide, arbitrary and against the principle of fairplay. ....(34)

## Article 102

As it appears in the instant case even if for argument's sake it is conceded that there was a contract and more so, the same was not merely to supply the generators but also for installation and maintenance of the generators even then, the contract being not entered into by the appellant with the respondent in terms of any statutory provision or in exercise of statutory power of the appellant but the contract being an ordinary commercial contract it comes to that the relief granted by the High Court Division in the writ petition is not legally available to the respondent in respect of the contract allegedly entered into between the appellant and the respondent. (47)

\*Civil Appeal No. 57 of 2000.

(From the judgment and order dated May 11 and 12 of 1999 passed by the High Court Division in Writ Petition No. 2621 of 1998).