



02-11-11, 02-11-11, 02-11-11, 02-11-11, 03-11-11

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

Writ Petition No. 718 of 2008.

In the matter of :

An application under Article 102(2)(a)(i) of the
Constitution of the People's Republic of
Bangladesh.

And

In the matter of :

Bangladesh Legal Aid and Services Trust
(BLAST) represented by its Executive Director,
and others

.....Petitioners.

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Bangladesh, represented by the Secretary, Ministry
of Housing and Public Works, and others

.....Respondents.

Mr. Tanim Hossain Shawon, Advocate
.....for the petitioners

Mr. Akram Hossain Chowdhury, DAG
.....for the respondents.

Present :-

Mr. Justice Syed Mahmud Hossain
and

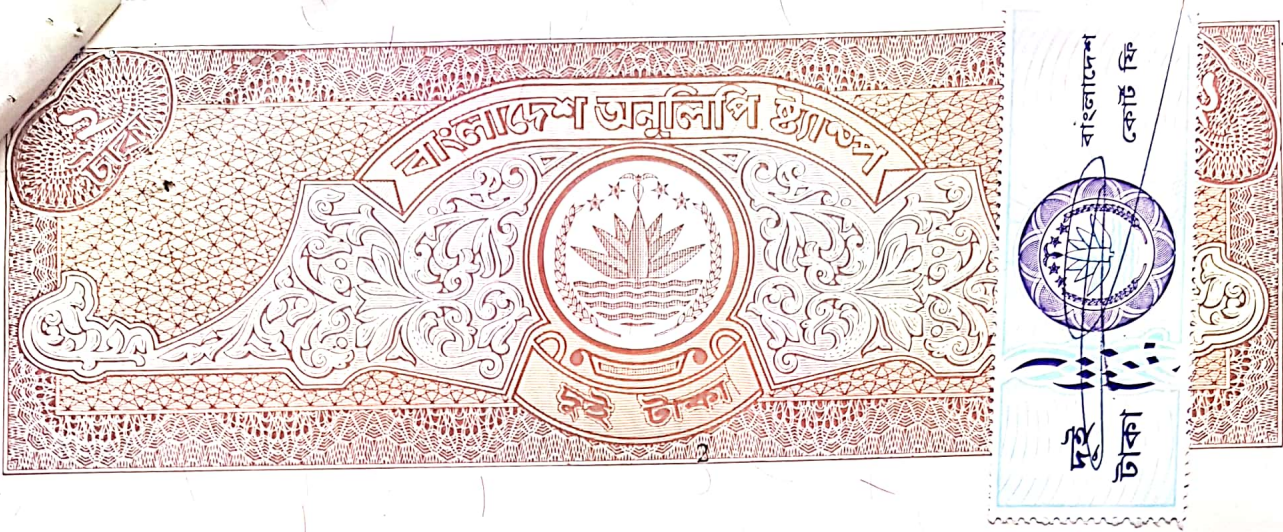
Mr. Justice Gobinda Chandra Tagore.

Heard on : 3.10.2010 & 11.10.2010

Judgment on : 13.10.2010.

Gobinda Chandra Tagore, J:-

This Rule Nisi obtained under Article 102(2)(a)(i) of the Constitution
of the People's Republic of Bangladesh calls upon respondent Nos. 1, 2 and
4 to 6 to show cause as to why the respondents should not be directed to
establish Code Enforcement Authority as per Chapter-2, Code 2.1 of the
Bangladesh National Building Code 2006 and further to show cause as to



why the respondents should not be directed to secure compliance with the safety and security provisions of the Bangladesh National Building Code, 2006 at every level of construction and demolition of any building and/or why such other or further order or orders, as to this Court may seem fit and proper, should not be passed.

Shortly stated the relevant facts necessary for disposal of the *Rule Nisi* are as follows:-

Petitioner No.1, Bangladesh Legal Aid and Services Trust (BLAST) is a legal aid and human rights organization committed to protecting and promoting human and fundamental rights of the poor and disadvantaged groups in keeping with the spirit of the Constitution, and striving to establish the Rule of law and good governance in the society by empowering the weaker and vulnerable segments to establish their rights through public interest litigation and advocacy.

Petitioner No. 2, Bangladesh Occupational Safety, Health and Environment Foundation (OSHE) is a specialized labour organization working specifically on issues relating to workplace safety, health and the environment. It also serves as a national collaborating centre of the International Occupational Safety and Health Information Centre (CIS) of International Labour Organization (ILO).

Added co-petitioner No. 3, Safety and Rights Society, is a society registered under the Societies Registration Act, 1860. It was established with the objectives, inter alia, to improve workplace health and safety conditions in Bangladesh.

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Petitioner No.2 monitored national news reports on workplace deaths in 2007. The summary of the reports as contained in Annexure-A shows that during the period between January and December 2007 there were 50 reports of death of construction workers. The causes of these deaths include falls from heights, contact with electric cables, collapse of trenches and walls, falls of bricks and collapse of building during demolition.

Petitioner No. 3 also monitored reports of workplace deaths published in national newspapers in the years 2007, 2008 and 2009 and, working with BRAC Human Rights and Legal Services, and Ain-O-Salish Kendra undertook investigations into about half of these reported deaths to assess, inter alia, the accuracy of the newspaper reports.

In April 2010, petitioner No. 3 published a report titled 'Legal Reform to Prevent Workplace Death and Injury including analysis of worker deaths, 2007-2009', Annexure-F. Pages 4 to 34 of the report contain the summaries of 320 deaths and 265 deaths reported in national newspapers in 2008 and 2009 respectively. Pages 35 to 40 of the report provides tables with a detailed breakdown of different aspects of these deaths including the location of the death, how the death took place, the sector in which the death occurred (construction, manufacturing service, agriculture or mining) and the cause of death. Table-7 at page 38 of the report shows that 103 of the 222 (or 46%) deaths in 2007, 120 of the 320 (or 38%) deaths in 2008 and 93 of the 265 (or 35%) deaths in 2009 occurred in the construction sector. Table-9 at page 40 of the report sets out the causes of these deaths. This shows that the main causes of deaths in the construction sector were (a) Electrocution – it caused 34 deaths in 2009, 42 in 2008 and 24 in 2007; and



(b) falls from heights- it caused 26 deaths in 2009, 37 in 2008 and 26 in 2007.

During the demolition operation of RANGS Bhaban at Dhaka in pursuance of an order of the Supreme Court, a part of the building collapsed on 08.12.2007 at midnight resulting in the death of several construction workers. The report of this incident was widely published in different dailies and it was criticized by people from all walks of life. Following this incident, petitioner No. 1 undertook an investigation with a view to probing into the cause of deaths. It was revealed from the investigation report that a company dealing with ship breaking namely 'Six Star' was assigned to demolish Rangs Bhaban, but they did not comply with the necessary safety measures for demolishing such a Bhaban, which eventually resulted in deaths, serious injuries and huge loss.

Considering the frequent occurrence of deaths, petitioner No. 1 sent a legal representation to the Secretary, Ministry of Public Works vide Memo No. PIL and Advocacy Cell-BLAST/161/040607 dated 5.6.2007, Annexure-B seeking information as to what instructions and guidelines the respondents sent to the relevant persons to take safety measures for avoiding deaths and injuries of construction workers as per the workers safety provisions provided in the National Building Code, 2006. But petitioner No. 1 did not get any response from the concerned authority.

The Government, in exercise of the power conferred to it by Section 18A of the Building Construction Act, 1952, (Act No. 11 of 1953), on 15.11.2006, made Bangladesh National Building Code, 2006 (herein after referred to as the Code) for the purposes of establishing minimum standards

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for design, construction, quality of materials, use and occupancy, location and maintenance of all buildings within Bangladesh in order to safeguard, within achievable limits, life, limb, health, property and public welfare. The installation and use of certain equipment, services and appurtenances related, connected or attached to such building are also regulated by the Code to achieve the same purpose.

Although more than four years have elapsed since the making of the Code, the Government has not yet established any code enforcing agency nor has designated any existing agency throughout the country as code enforcing agency as required by the Code in order to enforce and implement the same.

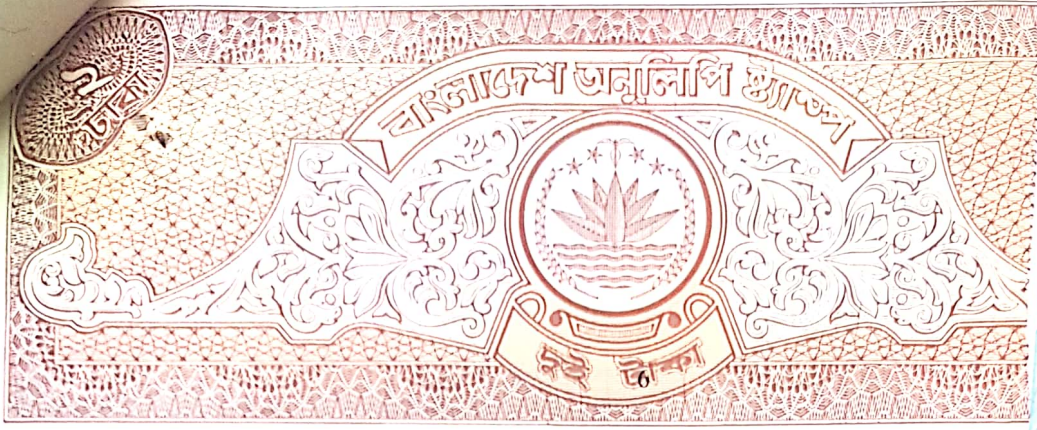
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Justice Islam
1. Member of the
Court of Bangladesh
1. Division, Dhaka

The Rajdhani Unnayan Kartiparkho (RAJUK), the body in Dhaka entrusted with the responsibility of enforcement of the Code, is not enforcing Part 7 of the Code, which deals with workplace safety. Although it employs inspectors, these inspectors do not have any role in the enforcement of part 7 of the Code, and are only responsible for ensuring that a building complies with the permissions granted by the RAJUK. Moreover, these inspectors have no background, training or experience in compliance with the issues set out in part 7 of the Code. This is confirmed by the fact that there has never been a case initiated by RAJUK for breach of any provisions set out in Part 7 of the Code.

Being aggrieved by the failure of the respondents to take appropriate initiatives with the health and safety provisions at work place as described in the Code. The petitioners moved the instant Writ Petition and obtained the *Rule Nisi*.

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During hearing of the Writ Petition, Bangladesh Construction and Wood Workers Federation, a registered Organization under the Industrial Ordinance-1969 filed an application for addition of party. It appears from the application that the applicant supports and adopts the case of the petitioners and as such it is not necessary for adding the applicant as co-petitioner to the Writ Petition in order to adjudicate upon and settle all the questions involved therein. However, the applicant has been allowed to place its case before this Court at the time of hearing of the Writ Petition.

The *Rule* has been properly served on the respondents along with an interim direction to inform this Court about implementation of the Bangladesh National Building Code, 2006 in respect of building construction and demolition at Dhaka and Chittagong cities and to submit a report to that extent within 4(four) weeks from the date of issuance of the *Rule*. But the respondents had neither appeared nor submitted any report as directed by the *Rule* issuing order.

Mr. Tanim Hossain Shawon, learned Advocate appearing on behalf of the petitioners submits that though pursuant to the provisions of Section 18(A) (1) of the Building Construction Act, 1952 the Government adopted the Bangladesh National Building Code, 2006, the respondents have not yet established any new 'Authority' or designated any existing agency as the 'Authority' for enforcement of the Code as required by Chapter 2 of Part 2 of the Code, which resulted in death of several hundred construction workers, serious injuries and huge losses to other construction workers.

He further submits that it is the legal obligation of the respondents to secure safety and security of the construction workers by implementing the

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provisions of the Code through the 'Authority' and as such they should be directed to establish a new 'Authority' or designate an existing agency as the 'Authority' for enforcement of the Code with a given area of jurisdiction.

The learned Advocate for the petitioners also submits that unless the Code is enforced through the 'Authority' as required by the Code itself, the construction workers' fundamental rights to be treated in accordance with law and to life as guaranteed under Articles 31 and 32 of the Constitution would be further infringed and as such the respondents should be directed to enforce the Code immediately.

The learned Advocate finally submits that this Court should formulate and pass necessary directions in the form of continuous mandamus on the respondents so that this Court can monitor and supervise whether the Code is expeditiously, justly and properly implemented and observed consistently or not.

Mr. Md. Suza-Al-Faruque, learned Advocate for the proposed co-petitioner, Bangladesh Construction and Wood Workers Federation having adopted the submissions made on behalf of the petitioners submits that since the respondents made the Code, they are legally bound to comply with and implement the same and as such the Rule should be made absolute.

We have perused the Writ Petition and the annexures thereto and heard the learned Advocates.

It appears from the Writ Petition that an alarming number of construction workers lose their lives every year while they are engaged in construction or demolition of buildings and other structures. The causes of these deaths include falls from heights, electrocutions, collapse of trenches

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and walls, falls of bricks and other materials, and collapse of buildings during construction or demolition of buildings and other structures. But for avoiding such deaths and injuries of construction workers the concerned constructor, body or person must take safety measures as embodied in the National Building Code, 2006.

By section 2 of the Building Construction (Amendment) Act, 2006 (Act No.XV of 2006) section 18A was inserted in the Building Construction Act, 1952 (Act No.II of 1953). Section 18A(1) of the Act provides that the Government may make provisions to carry out the purposes of the Act and the provisions so made may collectively be called Bangladesh National Building Code, hereinafter referred to as the Code.

Section 18A (2) of the Act envisages that the Code may provide for, *inter alia*, construction practices and safety, and matter relating to administration and enforcement of the Code.

Section 18A of the Act runs as follows:

“18A. (1) The Government may, by notification in the *official Gazette*, make provision to carry out the purposes of this Act and the provisions made under this section may collectively be called the Bangladesh National Building Code.

(2) Without prejudice to the generality of the foregoing power, the Bangladesh National Building Code may provide for all or any of the following matters, namely :-

- (a) general building requirements, control and regulation;
- (b) fire protection;
- (c) building materials;
- (d) structural design;
- (e) construction practices and safety;
- (f) building services;

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- (g) alteration, addition to and change of use of existing building;
- (h) sign and outdoor display;
- (i) matters relating to administration and enforcement of the above matters."

The Government in the Ministry of Housing and Public Works, in exercise of the power conferred to it by Section 18A of the Act made the Code. It was notified in the *official Gazette* on 15.11.2006 and as such the Code has come into force on and from 15.11.2006.

Section 2 of the Code deals with its application, which provides as follows:

"২। ইমারত নির্মাণের প্রয়োজনীয় উপদান ও নিয়ন্ত্রণ (general building requirements, control and regulations), অগ্নি নির্বাপন ব্যবস্থা (fire protection), নির্মাণ উপকরণ (building materials), অবকাঠামোগত নকশা (structural design), নির্মাণ ও নিরাপত্তা (Construction practices and safety), নির্মাণ সেবাসমূহ (building services), বিদ্যমান ইমারতের সংযোজন বা পরিবর্তন (alteration, addition to and change of use of existing building) এবং সাইন ও আউটডোর প্রদর্শনীসহ (sign and outdoor display) ইমারত নির্মাণ (building construction) সংক্রান্ত আনুষঙ্গিক সকল বিষয়ে নিম্নবিধৃত পরিশিষ্ট (annexure)এর বিধানাবলী প্রযোজ্য হইবে, যথাঃ-

It appears from section 2 of the Code that the Code provides for all the matters enumerated in section 18A(2) of the Act covering all the matters which are concomitant with and incidental to building construction or demolition.

In section 1.2 of Chapter 1 of Part 1, the purpose of the Code has been described as to establishment of minimum standards for design, construction, quality of materials, use and occupancy, location and maintenance of all buildings within Bangladesh in order to safeguard, within achievable limits, life, limb, health, property and public welfare. The

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installation and use of certain equipment, services and appurtenances related, connected or attached to such buildings are also regulated by the Code to achieve the same purpose.

It enshrines that the provisions of this Code are applicable to all persons of Bangladesh irrespective of class, creed, culture, religion or sex. The Code does not in any way create or otherwise establish or designate any particular class or group of persons who will or should be specially protected or benefited by the provisions of this Code.

It further envisages that the expressed intent of this Code is to ensure public safety, health and general welfare insofar as they are affected by the construction, alteration, repair, removal, demolition, use or occupancy of buildings, structures or premises, through structural strength, ability, means of egress, safety from fire and other hazards, sanitation, light and ventilation.

Section 1.3 of this Chapter declares that the provisions of this Code shall apply to the design, construction, use or occupancy, alteration, moving, demolition and repair of any building or structure and to any appurtenances installed therein or connected or attached thereto, except such matters as are otherwise provided for in other ordinances and statutes controlling and regulating buildings.

Chapters 1 to 4 of Part 7 of the Code set out detailed procedure and safety measures to be adopted for the construction of buildings; storage, stacking and handling practices of construction materials and equipments, and demolition works.

As per section 1.1.1 of Part 7 provides the minimum requirements for safe constructional operations. It describes precautionary measures to be

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taken to ensure the safety of property, workmen, public, materials, services, plant and equipment.

The scope of this part described in section 1.1.2 covers the constructional responsibilities and practices in building sites; safe storing; stacking and handling of materials, and safety of personnel during construction operations. The provisions of this part apply to all constructional operations viz. erection, alteration, repair, removal or demolition of buildings and structures.

Section 1.2 of this part provides for planning for all constructional operations including the planning for fixation of the responsibilities of the concerned parties, temporary construction, site preparation and first aid attendant.

Section 1.3 provides for construction control. Section 1.4 provides for protection of public and workers.

Section 1.4.1 generally provides that erection, alteration, renovation, remodeling, repairing, removal or demolition of a building or structure shall be conducted in a safe manner. Suitable protection for the general public and workers employed thereon shall be provided according to the various provisions of the Code. It further specifies that all equipments and safeguards required for the construction work such as temporary stair, ladder ramp, scaffold, hoist, run way, barricade, chute, lift etc. shall be substantially constructed and erected so as not to create any unsafe situation of the workmen using them or the workmen and general public passing under, on or near them. Particularly, it provides for ensuring protective fences and railings; canopies, overhangs and platforms; protective devices; notices and

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signs; watchman and auditory signal, and safe load during constructional operations.

Section 1.5 provides for protection of public and private property during such operation.

Chapter 2 of this part deals with storage, stacking and handling practices of construction materials. Section 2.1.1 provides that materials required in construction operations shall be stored, stacked and handled in a manner to prevent deterioration or intrusion of foreign matter and to ensure the preservation of their quality for the work. It also provides that materials shall be stored and placed so as not to endanger the public, the workers or the adjoining property. Section 2.3.1 provides that each workman shall be instructed for the proper method of loading and unloading from rail wagons and motor vehicles, and provided with necessary equipment for safety and the supervisors shall ensure that the required number of workmen based on the weight and the distance involved in each job is available and engaged for the particular job.

The provisions of chapter 3 of this part apply to the safety of life and property during construction of various parts of a building or any other structures. Section 3.1.2 deals with safety of workmen as to that helmets conforming to BDS 1265 and BDS 1266 shall be worn by the workmen and other personnel at all times during the work and the welders and gas cutters shall be equipped with proper protective equipment like safety goggles of accepted standard (BDS 1360), gloves, safety boots, aprons and standard hand shields. Section 3.1.3 provides that during erection of tall buildings, a

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nylon net is required to be installed around the building periphery 3 to 4 meters below the working level.

In order to prevent the workers from touching high voltage cables section 3.1.3 imposes duties that warning signs shall be displayed where necessary to indicate hazards areas like hi-voltage zone, hand lamps shall be of low voltage, preferably 24V and all electrically operated hand tools shall be provided with double earthing. Section 3.9.2 of the same chapter provides that all cables and signal cords are required to be guarded wherever such cables and cords pass through or cross working spaces and the locations of underground cables, if any, as well as overhead cables are required to be identified and the scaffolds hoists etc. should be installed after providing proper guards to such cables.

For the purpose of providing the safety of workers involved in excavations and the construction of trenches, duties are imposed under section 3.2.1 to 3.2.12, which requires consideration of the safety of the trench and the need to use props to prevent the trench from collapsing.

In order to prevent falling from heights during construction of multi-storied building section 3.5 of this part provides for various provisions and requirements. In this regard section 3.5.1 generally provides that platforms, catch ropes, nets etc. shall be provided during the construction of roofs. In addition thereto, precaution shall be taken to employ the correct technique of hoisting materials, to use hoists of sufficient strength for the quantity of stores to be hoisted, and to prevent overloading and overturning of hoists or buckets, etc. This section further provides that where, the floor of one storey is to be used for storage of materials or the construction of roof, it shall be

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ensured that the total load does not exceed the capacity of the floor. In this connection section 3.5.5 provides that every temporary floor opening shall either have railing of at least 900 mm height or shall be constantly attended. Every floor hole shall be guarded by either a railing with toeboard or a hinged cover and alternatively the hole may be constantly attended or protected by a removable railing. This section further provides that every stairway floor opening shall be guarded by railing at least 900 mm high on the exposed sides except at entrance to stairway and every ladderway floor opening or platform shall be guarded by a guard railing with toeboard except at entrance to opening. It also provides that every open-sided floor or platform 1.2 meters or more above adjacent ground level shall be guarded by a railing on all open sides except where there is entrance to ramp, stairway or fixed ladder. The above precautions shall also be taken near the open edges of floors and roofs.

For the purpose of preventing deaths resulting from demolition work, the Code contains an extensive chapter namely chapter 4 of Part 7, which generally provides for safety provisions for demolition and dismantling of all types of buildings and structures in addition to the safety requirements mentioned in Chapter 3. Section 4.1.2 provides, inter alia, that before commencing the demolition work a detailed survey and study shall be conducted about the structure to be demolished and, the safety and other conditions of other buildings in its surroundings. Section 4.1.4 provides for precautions prior to demolition, which also includes that workmen shall be provided with all necessary safety appliances as specified in this Chapter and in Chapter 3 prior to demolition. Section 4.1.5 provides for various means of

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protection of public and section 4.1.6 imposes duties to set up sidewalk shed and canopies for the safety of the public. Section 4.2.1 provides that the owner shall generally provide protection against all damages or loss of life and property during demolition.

The Code also provides for precautionary measures and protections against the natural disaster by earthquake. Section 2.5 of Chapter 1 of part 4 of the Code deals with 'Earthquake Loads'. Section 2.5.1 generally provides that minimum design earthquake forces for buildings, structures or components thereof shall be determined in accordance with the provisions of this section. For primary framing systems of buildings or structures, the design seismic lateral forces shall be calculated either by the Equivalent State Force Method or by the Dynamic Response Method based on the criteria set forth in section 2.5.5.1. Overall design of buildings and structures to resist seismic ground motion and other forces shall comply with the applicable design requirements given in Chapter 1.

Section 1.4 of part 1 of the Code envisages that the Code is also applicable to the existing buildings if in the opinion of the Authority the continuation of the use of any existing building is hazardous to life and property and such use or occupancy was not legal on the date of promulgation of the Code.

Apart from providing various precautionary and protective measures against the deaths of construction workers by falls from heights, electrocutions, collapse of trenches and walls, falls of bricks and other materials, and collapse of buildings and other structures during construction or demolition, the highly voluminous Code consisting 1295 pages also

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contains extensively detailed provisions and regulations for construction or demolitions of buildings and other structures, and its related other works inasmuch as for ensuring overall safety and security for the construction workers, owners and occupiers of the buildings and other structures in its surroundings, pedestrians and the public in general, and overall design of buildings and structures to resist earthquake forces including seismic ground motion, and other forces. Therefore, the application and implementation of the Code bear a great public importance. Though the Code is legally in force, the respondents have yet to apply and implement the provisions thereof.

The Code itself sets out the mechanism by or through which its provisions are to be applied and implemented. Section 2.1 of Chapter 2 of Part 2 of the Code (Organization and Enforcement) directs the Government to establish a new or designate an existing agency responsible for enforcement of this Code with a given area of jurisdiction. For the purpose of administering and enforcing the provisions of this Code, the code enforcing agency shall have the authority of the Government and shall be referred to as the Authority.

Section 2.1.1 of this Chapter provides that the administrative and operational chief of the Authority shall be designated as the 'Building Official', who shall act on behalf of the Authority. The Building Official may designate an employee or employees, who shall carry out the specified duty and exercise the specified power of the Building Official.

Section 2.1.2 of this Chapter provides that Small Local Bodies like pourashavas and thanas located outside the larger city municipalities and

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having insufficient funds for individually carrying out the task of a code enforcing agency may jointly appoint or designate, with the approval of the Authority, a Building Official, who shall have a jurisdiction over the combined area of jurisdiction of the concerned local bodies.

Section 2.1.3 provides that the Building Official shall appoint such number of officers, technical assistants, inspectors and other employees as shall be required for proper administration of the Code and as authorized by the Authority.

Section 2.3 of part 2 provides for a 'Board of Appeals' to hear and decide appeals of orders, decisions or determinations made by the Building Official related to the application and interpretation of the Code.

The remaining sections of the said chapter contain elaborate provisions regarding the qualification of the Building Official and other employees, powers and duties of the Building Official, violation and penalties, power to make Rules, etc.

Thus, Chapter 2 of Part 2 of the Code (Organization and Enforcement) sets out the framework conforming to which the Government must establish the code enforcing agency in order to apply and implement the Code, but the Government has yet to do so.

One of the purposes of the Code is to safeguard, within achievable limits, life, limb, health, property and public welfare.

Preamble of our Constitution declares that in the Republic, amongst others, the rule of law and fundamental human rights will be secured for all citizens. Article 11 of the Constitution provides, *inter alia*, for respect for the dignity and worth of the human persons shall be guaranteed. Article 14



envisages that it is a fundamental responsibility of the State to emancipate the toiling masses – the peasants and workers- and the backward sections of the people from all forms of exploitation. Article 15 also imposes fundamental responsibilities on the State to secure basic necessities of life, including food, clothing, shelter, education and medical care; the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quality and quantity of work; the right to reasonable rest, recreation and leisure, and the right to social security, that is to say, public assistance in cases of undeserved want arising from unemployment, illness, or disablement, or suffered by widows or orphans or in old age, or in other such cases. Article 18 provides that the State shall regard the raising the level of nutrition and the improvement of public health as among its primary duties. Article 20(1) envisages that work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle “from each according to his abilities to each according to his work”.

Article 31 of the Constitution enshrines that to enjoy protection of law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Article 32 of the Constitution guarantees that no person shall be deprived of life or personal liberty save in accordance with law. Therefore the fundamental rights adopted in the light of the fundamental principles of State policy also guarantee that no action

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detrimental to both life and body can be taken except in accordance with law.

Article 40 of the Constitution guarantees, amongst other, the fundamental right to lawful profession or occupation.

It also appears from the fundamental principles of State policy and the fundamental rights embodied in the Constitution that workers have been given special emphasis and safeguard under the Constitution. Therefore, the provisions and regulations made for ensuring the safety of the construction worker are consistent with the relevant principles of State policy discussed above and fundamental rights guaranteed under Articles 31, 32 and 40 of the Constitution.

Article 8(2) of the Constitution enshrines that the 'Fundamental Principles of State Policy' set out in Part II of the Constitution shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of the land, and shall form the basis of the work of the State and of its citizens. Though as per the same Article 8(2) those principles are not judicially enforceable, thereby neither the State itself nor its any employee or citizen is authorised to do or omit to do anything in contradiction to or even in derogation of any such principles.

But unless and until a safe, healthy and congenial working atmosphere is ensured for the construction workers by applying and implementing the Code in construction or demolition of building and other structures, omission in contradiction to or in derogation of the fundamental principles



of State policy and the fundamental rights so far those relate to the construction workers would continue.

Article 7(1) of the Constitution declares, *inter alia*, all powers in the Republic belong to the people. Article 21(1) envisages that it is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property and Article 21(2) imposes a duty on every person in the service of the Republic to strive at all times to serve the people.

We have already found that the Code was made by exercise of the Government's power under section 18A (1) of the Building Construction Act, 1952, and the provisions and regulations contained therein were adopted pursuant to section 18A (2) of the Act, and the Code was notified in the *official Gazette* on 15.11.2006. Therefore, the Code has force of a law inasmuch as the Code being made by Government, it is also binding upon the Government and its employees.

We have also found that the application and implementation of the Code are of great public importance. Therefore, to enforce, apply and implement the Code by establishing the Code enforcing agencies with respective areas of jurisdiction, would be a performance of public duty and service to the people by the respondents inasmuch as they are required by the Code to do the same.

In the facts and circumstances, we find that the respondents failed to discharge their legal duty as required by the Code. Therefore, we find merit in the *Rule Nisi*. Accordingly, the Rule is made absolute. Hence, the respondents are directed to-

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- (a) establish new or designate existing agencies as code enforcing agency (Authority) with respective areas of jurisdiction for enforcement of the Bangladesh National Building Code, 2006 throughout the country in accordance with the provisions of Chapter 2 (Organisation and Enforcement) of Part 2 of the Code within 01 (one) year from the date of receipt of this judgement.
- (b) designate, in the meantime, RAJUK and the respective Unnayan Katripaksha (Development Authority) of all other Municipality Corporations as the respective code enforcing agency (Authority) for enforcement of the Code within 03 (three) months from the date of receipt of this judgement;
- (c) secure immediately compliance with the safety and security provisions of the Code at every level of construction or demolition of buildings and other structures;
- (d) submit progress reports to this Court in compliance with the preceding direction Nos. (a), (b) and (c) at the end of every 03 (three) months from the date of receipt of this judgment.

The prospective code enforcing agencies (Authorities) after being established or designated in accordance with above direction Nos. (a) and (b) shall also submit reports on their organisational and

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operational development to this Court at the end of every 03 (three) months.

This Writ Petition shall be deemed to be a writ of continuous *mandamus* so that this Court may monitor and supervise whether the Code is being expeditiously, justly and properly implemented, and observed consistently or not and pass such order or orders as this Court may seem fit and proper in this regard from time to time.

Let a copy of this judgment be served on each of the respondents as well as on the Secretary of the Government in the Ministry of Local Government, Rural Development and Co-Operatives by a special messenger of the Court at the cost of the office immediately for information and compliance with the same.

However, there would be no order as to costs.

Gobinda Chandra Tagore

Syed Mahmud Hossain, J:

I agree.

Syed Mahmud Hossain

Type by: Nurun Nahar
02.11.2011

Read by:

Exd. By:

প্রত্যায়িত অবিকল প্রতিলিপি

সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৬-৭-২ ই ৯ সনের ১ম এ আইনের)
শুভ ধারামতে ক্ষমতা প্রাপ্ত

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