

Chapter 3

MANDAMUS

3.1 Purpose

The word 'mandamus' means 'we command'. It more specifically command to law enforcing agencies that has jurisdiction to take legal action. It is obvious that when a Court or tribunal or an authority or a person or any other law enforcing agency has refused or failed to perform his statutory obligation, it is writ of mandamus by which the higher authority can compel the authority or court or person to do his statutory obligation. The constitutional provisions regarding writ of mandamus, are as follows-

The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law :

(a) on the application of any person aggrieved, make an order

(b) directing a person performing any functions in connection

with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do.

(Article 102)

In Bangladesh Constitution the word 'mandamus' is nowhere specifically mentioned. But clause (2) (a) (i) of article 102 mentioned words which are in similar to the writ of mandamus. A mandamus applicant have to establish a special interest or general interest on ground that concerned law enforcing agencies are in silence and for their silence a group of people or state suffers irreparable loss and injury. By way of mandamus the petitioner compel the concerned authority to perform or to do his statutory obligation.

3.2 Development of Mandamus

In *Lakhi Ram v. Haryana*,¹ the appellant prayed for mandamus challenging the action of the Government expunging adverse remarks made in the annual confidential report of an officer claiming that the infringement would prejudice his chance of promotion. The High Court Division dismissed the application on the ground that the appellant had no *locus standi*. The Indian Supreme Court reversed the decision and remanded the case for disposal on merits.

In view of the above case reference, it is clear that an aggrieved person has right to file writ petition when his fundamental rights has been infringed and for the said reason, the High Court Division has power to give directions to law enforcing agencies for taking appropriate steps as required by law.

In *Matiur Rahman v. Bangladesh*,² that since enforcement of fundamental rights is involved and since the present petitioner is, in fact, praying for direction to obey the lawful order of the Government by the National Board of Revenue in the instant case by absorbing the petitioner in BCS (Customs & Excise) Cadre. We are of the view that this application is maintainable under article 102 of the Constitution in as much the Administrative Tribunal is not competent to give a direction, as the High Court Division is competent to give direction under article 102 of the Constitution.

In *Prof. Nurul Islam v. Bangladesh*,³ the High Court Division has given following directions:

- (a) The Government shall take steps phase by phase to stop production of tobacco leaves in tobacco growing districts of Bangladesh, giving subsidy to the farmers, if possible and necessary to produce other agricultural products instead of tobacco production, if possible with alternative beneficial jobs.
- (b) The Government shall restrict issuance of license for setting up tobacco industry or bidi factory and direct the existing tobacco and bidi companies to switch over to some other industry to prevent production of cigarettes, bidi and other tobacco related products, specifying a reasonable period for the purpose.

¹ AIR 1981 SC 1655.

² 50 DLR (1988) 357.

³ 52 DLR (2000) 413.

- (c) To prohibit importation of cigarettes or tobacco related products within a reasonable period and meanwhile to impose heavy tax for the import and to print the statutory warning legibly in bolds words in Bengali.
- (d) The Government, the concerned Ministry or the Broadcasting Television Authority, Newspapers or bill-boards or any other agency engaged in advertisement shall not advertise or telecast any cigarette/bidi related advertisement or commercials and shall not undertake any show program propagating cigarette/bidi smoking among the citizen.
The direction shall be effective after the expiry of the existing contract of advertisement between them and the manufactures or their agents.
- (e) The Government and or/any concerned authority shall not undertake or encourage, any promotional ventures like ‘Voyage of Discovery’ and those shall be strictly prohibited.
- (f) The Government shall direct the appropriate authorities to take steps prohibiting smoking in public and public places like Train, Railway Stations, Bus Stations, Ferry-Ghats, Steamers in any public-gathering / meeting / assembly making the atmosphere noxious to health taking resort to strict compliance of the existing provisions of sections 278, 133, 188 of the Penal Code.

In *Bangladesh National Women Lawyers Association (BNWLA) v. Government*,⁴ the High Court Division has given following directions to filling up the legislative vacuum in the nature of law declared by the High Court Division under the mandate and within the meaning of article 111 of the Constitution.

(i) *Extent*

These guidelines shall apply to all work places and educational institutions in public and

private sectors within the territory of Bangladesh.

(i) *Aims and objectives*

The aims and objectives of guidelines include-

- (a) to create awareness about sexual harassments;
- (b) to create awareness about the consequences of sexual offences;

⁴ Judgment on 14. 05. 2009, Writ Petition No. 5916 of 2008.

(c) to create awareness that sexual harassment is a punishable offence.

(iii) Procedure of the Complaint Committee

Normally the complaint has to be lodged with the complaint committee within 30 working days of the occurrence.

(a) In case of minor harassment, if it is possible, the complaint committee shall dispose of the complaint with the consent of the parties involved and shall report to the concerned authority of the educational institution or work place in public or private sector, as the case may be.

(b) In all other cases the complaint committee shall investigate the matter.

The complaint committee will have the power to send registered notice by mail to the parties and the witness, conduct hearing, gather evidence, and examine all relevant papers. In this type of complaint, apart from oral evidence emphasis should be placed on circumstantial evidence. To conduct the work of the complaint committee effectively the related office of the educational institutions and workplaces in both public and private sectors will be bound to extend any co-operation which is requested from them. The complaint committee will keep the identities of the complaint/s confidential. While regarding the testimony of the complainant's any question or behavior which is intentionally base, insulting or harassing should be avoided. The testimony must be recorded in camera. If the complainant wants to withdraw the complaint or stop the investigation then the reason behind this has to be investigated and mentioned in the report.

In *Prof. Dr. Niaz Zaman v. RAJUK and Others*,⁵ on leave to appeal the Appellate Division verdict that since the petition is by way of public interest litigation directions were given to RAJUK to clarify the status of land proposed to be acquired and for preparing a layout plan depicting the road around the lake. Preservation of the lake and to maintain a walkway with reasonable slope around the lake is a public purpose and thus the land inside the periphery of the lake should be acquired in public interest.

⁵ 25 BLD (2005) AD 142.

In *Human Rights and Peace for Bangladesh (HRPB) v. Bangladesh*,⁶ the HCD has given following directions:

(K) wm Gm I Avi Gm g`vc Abymvfi AvMvgx 30-11-2009 ZvwiLi gfa` mswk-o b`x,wji mxgvbv Rwic KvR m`ubœ,

(L) 30-11-2009 ZvwiLi gfa` mswkó b`x,wjK cwiTekMZ msKUvcbae GjvKv (*Ecologically Critical Area*)

†NviYv Ges cieZx© 6 gv†mi gfa` b`x,wj i¶vq cÖ†qvRbxq wb†`©wkKv cÖYqb,

(M) 30-11-2010 ZvwiLi gfa` mxgvbv wcjvi `vcb Ges b`x-mxgvbvq *Walkway/pavement* wbg©vY ev e,¶†ivcb KiY,

(N) 30-11-2010 ZvwiLi gfa` b`x,wji Af`š—†i Aew`Z mKj cÖKvi `vcbv AcmviY,

(O) AvMvgx 3 gv†mi gfa` GKwU RvZxq b`x i¶v Kwgkb MVb,

(P) AvMvgx 2 erm†ii gfa` gnvbMixi PZz©cv†k|© 4wU b`x Lbb Ges cwjw_b e`vMmn Ab`vb` eR©` I cwj AcmviY,

(Q) mswk-o KZ©,c¶ AbwZwej†^ mswk-o Av`vj†Z cwiTek msµvš— wePviabx †gvKİgv wb@úwËi Rb` cÖ†qvRbxq

c`†¶c MÖnY Kwi†eb,

(R) AvMvgx 2 erm†ii gfa` XvKv` evKj`vÛ euvamn b`x-Zxi` mKj miKvix f~wg nB†Z †`vKvbcvU I Ab`vb`

`vcbv AcmviY Kwi†Z nB†e|

According to directive ‘Ga’ the respondents are required to remove all the structure within the territories of the four rivers. To implement the judgment, the respondent must take further steps removing all the structures / encroachments situated within the territories of those four rivers. The respondents are directed to start the work of removal of structures by demolition within the territories of the rivers Buriganga, Turag, Balu, and Shitalakhya. In order to ascertain the progress of the work the respondents are also directed to submit report every three months through the Registrar, Supreme Court.

⁶ Judgment on 25 & 26th June 2009, Writ Petition No. 3509/ 09.

