

Mahmudul Islam

Constitutional Law of Bangladesh

Second Edition

Mullick Brothers

CONSTITUTIONAL LAW OF BANGLADESH

Second Edition

Mahmudul Islam

Senior Advocate

Supreme Court of Bangladesh

Mullick Brothers
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Dedicated to the memory of

my father

from whom I had my

first lessons in jurisprudence

PREFACE TO THE SECOND EDITION

Since the publication of the first edition of the book, almost six years have elapsed. In the meantime all the copies printed were sold out. I am grateful to the readers in general and to my colleagues in the profession in particular for their warm reception of the book. I felt my labour well spent.

In these seven years many developments have taken place. The inertia of the initial stage of interpretation passed away. The Supreme Court seems to have been well on course for a positive approach having regard to the well expressed social goals the framers intended to achieve through the process of law. In *Dr. Mohiuddin Farooque v. Bangladesh*, (49 DLR (AD) 1), the Appellate Division took note of the special character of the Constitution and of the objectives mentioned in the Constitution to liberalise the standing issue and thereby paving the way for a purposive interpretation of the Constitution. In *Secretary, Ministry of Finance v. Masdar Hossain*, (2000 BLD (AD) 104), the same trend continued. This decision has gone a long way in affirming the independence of the judiciary as a basic feature of the Constitution and together with *Dr. Mohiuddin Farooque* will pass on as trend setters in constitutional interpretation in Bangladesh.

Until recently, there was a reluctance to view the provisions of art.31 and 32 as requiring the law to be reasonable and as importing the concept of due process of the American jurisdiction. Though not explicit, slum clearance case (*Ain-O-Shalish Kendra v. Bangladesh*, 1999 BLD 488) shows that the Supreme Court is ready to apply the due process test to determine the validity of governmental actions and several other cases in this direction followed. While appreciating the change in the attitude of the Supreme Court, it must be remembered that in constitutional interpretation a balance between the existing social conditions and the rights of the individuals should be made, and in deciding the disputes involving fundamental rights the social perspective and the current values cannot be lost sight of. (see *Nasreen Fatema v. Bangladesh*, 49 DLR 542)

In this edition, I have incorporated all the important judicial decisions handed down by the Supreme Court of Bangladesh and

reported in different law reports to make the book up to date in the matter of precedents. New principles like the doctrines of legitimate expectation, proportionality and public trust are emerging in constitutional and administrative law adjudication in different jurisdictions. I have tried to introduce these principles in discussion and commented on their applicability in Bangladesh. There is a necessity of evaluating these principles in the context of our social and economic conditions before grafting them in our jurisdiction.

In revising the text, I left the arrangement undisturbed so that the readers used to the arrangement of the first edition may quickly find out the topics they want to read.

In revising the book, I have taken the help of a number of lawyers. Of them, Ms. Nihad Kabir and Mr. Probir Neogi examined and corrected the manuscript, while Ms. Nahid Mahtab revised the table of cases. Mr. Rafique-ul Huq, the former Attorney General, helped me with quite a number of recent books and digests. My Assistant, Mr. Joydeb Nandi, spent considerable time in typing and printing the manuscripts. I am grateful to all of them. I am also grateful to the publisher for taking immense care in printing this edition.

This edition represents the position of the law as it stood on 31 December 2001.

31 January 2002

Mahmudul Islam

PREFACE TO THE FIRST EDITION

A constitution adopted through democratic process is expected to reflect the consensus of the people about their political organisation and the democratic values they cherish. Whatever may be written in a constitution, the success of democracy and realisation of the democratic values depends on a proper environment created by the actors in the political scene who must have faith and conviction in the utility and effectiveness of the rule of law and constitutionalism and must work relentlessly to establish it. In the absence of such conviction and commitment, the constitutional law may turn into what Wade and Bradley called "a transparent cover for a power-struggle that is not conducted in accordance with anything deserving the name of law".

The Constitution of Bangladesh came into operation in December, 1972. It was a robust document. Not only did it embody the principles of constitutionalism, rule of law and human rights, it made specific provisions for realisation of these lofty ideals. Unfortunately, soon this beautiful document began to receive rough treatment during both democratic and Martial Law regimes and it wore a completely distorted look. It is only recently that the Twelfth Amendment has restored the Constitution almost to its original shape and character. In this book an attempt has been made to view the constitutional law of Bangladesh in the light of the high ideals envisioned by the framers of the Constitution.

Analysis and review of the decisions of the superior courts is essential for the development of law in a country. Such review is regularly done in all countries having common law system. In Bangladesh, however, there is no specific journal devoted to this purpose and review of the decisions of the superior courts is few and far between. I have tried to examine and review the decisions of the Supreme Court of Bangladesh on constitutional law to the best of my ability. The nature of the subject leaves room for differing views and I do not claim infallibility. Even if some of the views expressed in this work are found to be incorrect, I hope that the questions raised and the views expressed will conduce to the development of the constitutional law in Bangladesh.

Constitutional law deals with the general principles regarding the functions of different organs of the State and their relationship with the people, while administrative law deals in detail with the powers and functions of the administrative authorities. Both are branches of public law and are so inter-related that it is difficult to distinguish one from the other. No attempt has been made to include or to exclude any principle of administrative law. While dealing with the principles of constitutional law, those principles of administrative law which naturally came into the discussion have been discussed.

The book is written primarily for students of law and members of the legal profession. To meet their needs, an effort has been made to deal mainly with the legal questions and issues which frequently confront the members of the profession, leaving aside those questions with which a student of political science is more concerned.

In writing this book I have taken help from many books. I have freely used the books on constitutional law by Wade & Bradley, B. Schwartz, H.M. Seervai, Dr. W.A. Wynes, A.K. Brohi, Dr. D.D. Basu and Dr. M.P. Jain, American Jurisprudence and the books on administrative law by H.W.R. Wade and B. Schwartz. I am grateful to the learned authors and to the editors of American Jurisprudence.

During the years of legal practice, I became associated with some of the important constitutional law cases and it generated a keen interest in me in the constitutional law in Bangladesh. I thought of writing on the subject. Being aware of my limitations, timidly I broached the subject with Mr. Justice Mustafa Kamal and Syed Ishtiaq Ahmed, former Attorney-General for Bangladesh. Both of them profusely encouraged me. Mr. Justice Kamal rang me up at regular intervals to enquire about the progress of the work. Mr. Ahmed was always there to discuss the complicated issues with me and to give valuable suggestions and advice. I made the fullest use of his rich library. He not only bought me an updated set of Basu's Commentary on the Constitution of India, he made a personal computer available for my work. Almost four years have passed since then. When the draft was ready Mr. Ahmed, in spite of his pre-occupations, willingly gave his valuable time to scan the whole draft and point out flaws in my thought-process wherever he found them and suggested improvements. Without his help it would have been difficult for me to complete the work.

Mr. Rafique-ul Huq, former Attorney-General for Bangladesh, made his beautiful law library available to me and I freely borrowed books and journals from his library. Whenever he went abroad he brought a few books on constitutional law for my use. When I had difficulty in publishing the book, he used his good offices and persuaded Mr. M. Morshed Khan, the Chairman of Arab Bangladesh Bank, to facilitate the publication by booking in advance substantial number of copies of the published work.

I must acknowledge with thanks the co-operation of all those who encouraged and assisted me. Constraints of space prevent me from mentioning all by name. Of them Miss Nihad Kabir, Barrister, took the trouble of reading the entire draft to check errors in the text besides giving many useful suggestions. Mr. Abdur Rahman Chowdhury, Advocate, did the painful job of checking the correctness of the citations and preparing the table of cases. Mr. Murad Reza, Advocate, helped me by providing some recent publications. Mr. Md. Ebadatullah and Mr. Matiur Rahman, Assistants of Syed Ishtiaq Ahmed and mine, complied with my innumerable requests.

This book would not have been written if I would have to write it with pen and paper. The innumerable changes that I made were possible because of the use of a personal computer. My son, Asif, fed a substantial portion of the draft in the computer and gave me lessons on computer operation. But I have the propensity of pressing the wrong button creating various kinds of problems. The task of rectifying the mistakes and retrieving the lost matters fell upon my youngest son, Arif, who also performed the vexing job of formatting the entire work and checking and correcting the innumerable mistakes committed by a novice computer operator as I am.

I am grateful to the Bangladesh Institute of Law and International Affairs for accepting my offer for publication of the book and as publisher agreeing to take the responsibility of marketing and distribution of the book.

I am thankful to Shaikat Printing and Packaging Limited for doing a fine printing job. I must also thank Mr. Mahbubul Alam Tara, Member of Parliament and Whip, and Mr. Haroon Rashid and Mr. Sukumar Chowdhury of Haroon Enterprise Limited for the help rendered to me.

I shall be less than just if I do not mention the part played by my wife. During these four years I could not stop my professional

work. Therefore I had to snatch the time which rightfully belonged to her. After meeting the demands of the profession, I worked late every night. There were times when I felt totally exhausted and thought of giving up. She bore with remarkable patience the travail of remaining awake late at night while I worked. She encouraged me in doing the job and urged me to proceed when I slowed down. This book is as much hers as it is mine.

Dhaka.

20 January 1995

Mahmudul Islam

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SUPPLEMENT

2.36 Classification on the basis of size, amount, quantity or number. Where the authority limits the grant of private warehouse licence to companies having paid up capital of Tk.10 crores or more, the classification does not offend equality clause of the Constitution as though all citizens are equal before the law, they may be subjected to different provisions of law at different times depending upon the circumstances in which they find themselves.¹

2.71 Government contract. The court made a distinction between enforcement of contract and the tendering process in awarding the contract. When a bidder's tender was once found non-responsive and therefore excluded from consideration, and subsequently the authority held that tender to be responsive on consideration of a clarification letter of that bidder, the court quoted with approval the decision of the Indian Supreme Court in *Tata Cellular v. India*², and held in *Hyundai Corporation v. Sumikin Bussan*³, that even in awarding a contract a public functionary must act within the framework of rule of law and cannot be allowed to act arbitrarily or unreasonably and the court in writ jurisdiction will interfere when the decision making process of the public functionary lacks transparency.

2.77 Discrimination in public employment. The members of the administrative service and the members of other services of the Republic have been appointed on the basis of the same competitive examination and there has not been any different procedure in appointing them and the members of the other services cannot be treated differently from the members of the administrative service without violating the guarantee of article 29 of the Constitution.⁴

2.105 Sweep of article 31. Where the National Board of Revenue restricts the grant of private warehouse licence to companies having paid up capital of Tk.10 crores or more, the restriction does not offend article 31 of the Constitution.⁵

¹ *S.A. Coconut Mills Ltd. v. Bangladesh*, 54 DLR 1

² AIR 1996 SC 11

³ 54 DLR (AD) 88

⁴ *Abdul Mannan v. Bangladesh*, 55 DLR 237

⁵ *S.A. Coconut Oil Mills v. Bangladesh*, 54 DLR 1

2.111 Life, liberty, body, property and reputation. Referring to the decision of the Appellate Division in *RAJUK v. Mohsinul Islam*¹, the High Court Division held in *Saleemullah v. Bangladesh*² that the State is bound to protect the health and longevity of the people free from threats of man-made hazards unless that threat is justified by law and as such action of authorities in converting open space for park into residential plots is violative of the fundamental right guaranteed under article 31 and 32. In the same vein, it has been held in *Dr. Mohiuddin Farooque v. Bangladesh*³ that the public functionaries are under obligation to preserve pollution free environment to protect life from all its ill effects and necessary direction was given to them to take sufficient measures to control pollution by industries and factories.

In *Aminul Haq v. Bangladesh*⁴ direction was sought to frame guidelines in respect of publishing news item injuring reputation of individuals, but the court declined to give such direction in view of the provisions of Press Council Act, 1974.

2.121 Safeguards as to arrest and detention. The power of the police to arrest under s.54 of the Code of Criminal Procedure, in the view of the High Court Division, is to a large extent inconsistent with the provisions of Part III of the Constitution.⁵

2.152 Protection against self-incrimination. In *BLAST v. Bangladesh*⁶ it has been held that remand for the purpose of interrogation is not necessary except for extorting information from an accused by physical torture or other means, but such extortion of information is contrary to the mandate of art.35(4); interrogation of the accused, if necessary, may be done in the jail custody; as is the present practice, prayer for police remand and grant of it is unconstitutional being violative of the fundamental rights ensured by the Constitution.

2.154 Protection against torture and degrading punishment or treatment. The High Court Division held that art.35(5) prohibiting torture or cruel, inhuman or degrading treatment, the very

¹ 53 DLR (AD) 79

² 55 DLR 1

³ 55 DLR 69

⁴ 55 DLR 90

⁵ *BLAST v. Bangladesh*, 55 DLR 363

⁶ *Ibid*

system of 'remand' for the purpose of interrogation and extortion of information by application of force is totally against the spirit and explicit provisions of the Constitution.¹ The court found infringement of fundamental right by colourable exercise of power under s.54 or under s.167 of the Code of Criminal Procedure and the court made important recommendations in respect of the exercise of the power under various provisions of the Code of Criminal Procedure including the power under s.54 and 167.

2.160 Freedom of movement. Freedom of leaving the country and returning from a foreign country has been re-iterated in *HM Ershad v. Bangladesh*.² Impounding of passport for the purpose of inquiry against the holder of the passport is not a lawful ground for impounding of passport. If such impounding was necessary in the interest of sovereignty and security of Bangladesh, a reply to the notice demanding ought to have been given.³

2.211. Freedom of religion. This right is not absolute and reasonable restrictions on the ground of public order or morality may be imposed. Restrictions may be imposed to regulate the activities of a religious group, but prohibition may be imposed only in extreme cases. Where the petitioner approached the authority to set up a permanent police camp in the campus, the entry of the police in the campus cannot be said to be illegal, but there is no law which allows the law enforcing agencies to prohibit a particular religious group from discharging their functions for an indefinite period. They may take necessary action if the situation demands, but prohibiting the devotees from entering the campus cannot be justified.⁴

4.40 Delegated legislation. Where the statute requires the delegatee to specify the guiding principles for determining capacity for imposition of capacity tax and the delegatee set out in the notification the basis of fixation of capacity, the notification in the facts of the case did not suffer from infirmity.⁵

5.4 Appointment of Judges. In *SN Goswami v. Bangladesh*⁶ it has been held that appointment of a judge to the Appellate Division

¹ Ibid.

² 7 BLC (AD) 67

³ *Tofail Ahmed v. Bangladesh*, 54 DLR 403

⁴ *Dewanbagi Darbar Sharif v. Bangladesh*, 54 DLR 413

⁵ *Bangladesh v. Eastern Beverage*, 7 BLC (AD) 125

⁶ 55 DLR 332

from amongst the judges of the High Court Division is not a promotion, it is a fresh appointment made by the President under art.95(1) from amongst the qualified persons and once the requirements as laid down in art.95(2) are fulfilled and the President acts on the advice of the Prime Minister, the High Court Division cannot cause an inquiry as to the reasons for appointing a particular person as a judge of the Appellate Division. On the question of consultation with the Chief Justice in the matter of appointment, the court made a distinction between constitutional consultation and conventional consultation and observed that the concept of consultation under art.116 has no manner of application in case of conventional consultation.

5.20 Nature of the relief to be granted. In *BLAST v. Bangladesh*¹ it has been held art.35(4) & (5) prohibit torture or cruel, inhuman or degrading treatment in police custody are not permissible and the court is competent to award compensation to a victim of torture or to the relation of a person whose death is caused in police custody or jail custody. The court further held that if the question of custodial death becomes a disputed question of fact, it will not be possible to award compensation in writ jurisdiction, but where it is found that the arrest was unlawful and that the person was subjected to torture while he was in police custody or in jail, in that case there is scope for awarding compensation to the victim or his nearest relation, in case of his death.

5.33 Certiorari. The High Court Division in writ jurisdiction does not act as an appellate authority of the Labour Court and when the relief prayed before the Labour Court was confined to a declaration that the dismissal was illegal and no prayer was made for reinstatement with back wages, the High Court Division acted in excess of jurisdiction in granting the relief of reinstatement with 50% back wages.²

5.63B Legitimate expectation. The Appellate Division in *BTMC v. Nasiruddin Chowdhury*³ in a detailed discussion accepted the position that a legitimate expectation cannot be defeated by the executive action unless public interest clearly requires negation of such interest, but at the same time found that such an expectation can

¹ 55 DLR 363

² *BTC v. Azizul Huq*, 7 BLC (AD) 119

³ 7 BLC (AD) 144,

be given effect to by the court only when the facts of the case clearly and unambiguously give rise to such an expectation. In *Hafizul Islam v. Bangladesh*¹ the petitioner was recommended as the best Chairman for Local Government Award, but the High Court Division negated his plea of legitimate expectation of being declared as the best Chairman observing that his expectation was neither based on legal ground, nor borne out by any legal begetting. According to the court, "The concept of legitimate expectation is to some extent uncommon in our jurisprudence. The word 'legitimate' connotes lawfully begotten. An expectation to become legitimate therefore should not be shorn of lawful begetting. The concept of legitimate expectation cannot be given such wide interpretation so as to allow any wishful hope without lawful root."

5.74 Abuse of discretion. In two decisions of the Appellate Division, *Ekushey Television Ltd. v. Dr. Chowdhury Mahmood Hasan*² and *Hyundai Corporation v. Sumikin Bussan*³ lack of transparency in the activities of the executive authority or other public functionaries was held to be a ground for interference in writ jurisdiction. The court reasoned that no public functionary acting in purported exercise of authority under any provision of law or Constitution has an unfettered discretion and therefore cannot act arbitrarily, arbitrariness being the anti-thesis of rule of law and equality clause of article 27 of the Constitution.

5.75 Abuse of discretion. When the discretion is exercised arbitrarily without proper application of mind to the relevant matters and the Board of Investment registered a proposed project without any feasibility report and financial analysis, the court interfered with the exercise of the discretion.⁴

5.80A Proportionality. In *Ekushey Television Ltd. v. Dr. Chowdhury Mahmood Hasan*⁵ the doctrine of proportionality as applied by the European Courts of Justice was pressed in aid, but the court declined to consider the application of the doctrine in the case stating, "This concept involves the court to evaluate whether proportionate weight has been attached to one or other consideration

¹ 2003 BLD 153

² 54 DLR (AD) 130

³ 54 DLR (AD) 88

⁴ *Engineer Mahmudul Islam v. Bangladesh*, 55 DLR 171

⁵ 55 DLR (AD) 26

relevant to the decision. As a ground for judicial review it is absolutely a new concept to our jurisprudence. And in accepting it this court shall have to accord different weights to different ends or purposes and different means which cannot be allowed in a review.”

5.88 Mandamus. Mandamus may issue to compel the police to record first information report.¹

5.116 Quo warranto. A writ of this nature cannot be maintained by a person to serve the ulterior purpose of another individual.²

5.122 Delay as a ground of refusing relief. In *Ekushey Television Ltd. v. Dr. Chowdhury Mahmood Hasan*³ the Appellate Division re-iterated its holding as regards delay in invoking writ jurisdiction, holding that delay or negligence will not be fatal when it is not shown that interference will defeat a right accrued in the interregnum period. But a writ petition is liable to be dismissed on the ground of inordinate delay.⁴

5.127 Efficacious remedy. When the self same matter is the subject-matter of a pending civil suit, writ petition is not maintainable.⁵

5.128 Efficacious remedy. Where the very basis of issuance of notice under a provision of a law is challenged, writ petition is maintainable without exhaustion of the remedy prescribed by that law.⁶ Where the impugned order suffers from inherent lack of jurisdiction, question of exhaustion of efficacious remedy does not arise.⁷

5.143 Pleadings. Where the facts stated in the writ petition are vague and unspecified and the facts are disputed, writ petition is not maintainable.⁸

5.150 Res judicata. Where in an earlier writ petition, among others, a sale deed was challenged, but the court did not issue rule in respect of the sale deed, the relief in respect of the sale deed shall be

¹ *Yasmin Sultana v. Bangladesh*, 54 DLR 269

² *Shaikh Obaidullah v. Syed Shahidul Haq Jamal*, 54 DLR 280

³ 54 DLR (AD) 130

⁴ *Delwar Hossain v. Bangladesh*, 54 DLR 494

⁵ *Shahjadi Begum v. Ministry of Communications*, 7 BLC (AD) 41

⁶ *American Express Bank v. NBR*, 54 DLR 6.

⁷ *Salim v. AC Land*, 54 DLR 72

⁸ *Sultana Nahar v. Bangladesh*, 7 BLC (AD) 89

deemed to have been refused and subsequent writ petition claiming the same relief will be barred by *res judicata*.¹

5.153. Power of review. In *MA Bari v. USOQ Kalyan Samity*² the High court Division held a review petition against a judgment in writ jurisdiction maintainable.

5.163 Aggrieved party. In *Dr. Mohiuddin Farooque v. Bangladesh*,³ the Appellate Division held that in so far as it concerns public wrongs or public injury or invasion of the fundamental rights of an indeterminate number of people any member of the public being a citizen suffering the common injury or common invasion in common with others has a right to invoke the jurisdiction under article 102 of the Constitution. But in *BRAC v. Professor Mozaffar Ahmed*⁴ the Appellate Division did not find the writ petitioner to be an aggrieved person as there was nothing in the writ petition to show that the writ petitioner moved the High Court Division for and on behalf of himself as also of other less fortunate persons of the society who have no source or means to invoke the writ jurisdiction, though the writ petitioner was seeking remedy against an alleged public wrong or injury. However, the court in *Ekushey Television Ltd. v. Dr. Chowdhury Mahmood Hasan*⁵ found the writ petitioners to have *locus standi* when they were complaining of an alleged public wrong committed by public functionaries. In review, the standing of the writ petitioner was questioned, but the Appellate Division overruled the objection, observing, "The nature of public interest litigation (called PIL hereinafter) is completely different from traditional case which is adversarial in nature whereas PIL is intended to vindicate rights of the people. In such a case benefit will be derived by a large number of people in contrast to a few. PIL considers the interest of others and therefore, the court in a public interest litigation acts as the guardian of all the people whereas in a private case the court does not have such power. Therefore, in public interest litigation the court will lean to protect the interest of the general public and the rule of law vis-à-vis the private interest. Where the rule of law comes in

¹ *Bangladesh v. Luxmi Janardhan Jew Thakur*, 7 BLC (AD) 114

² 55 DLR 289

³ 49 DLR (AD) 1

⁴ 54 DLR (AD)

⁵ 54 DLR (AD) 130

conflict with third party interest the rule of law will, of course, prevail.”¹

In *Engineer Mahmudul Islam v. Bangladesh*², the petitioner was found to have *locus standi* in a writ petition where approval of the project of container terminal was challenged and the court found that the allegation as to non-application of mind, negligence and arbitrariness on the part of officials and members of the Board of Investment involved in the process of approval and giving registration to the proposed project has its basis. Referring to the decisions of *Ekushey Television Ltd v. Dr. Chowdhury Mahmood Hasan*³ and *Kazi Mukhlesur Rahman v. Bangladesh*⁴ the court held, “Justice delivery system in this part of the world is based on the principle of liberty and justice for all. Public interest litigation means the legal action initiated in a court of law for the enforcement of rights and interest of the citizens in general or a section thereof. The judiciary is to play a vital and important role not only in preventing and remedying abuse and misuse of power but also to eliminate injustice. It must not be forgotten that the cause of justice cannot be allowed to be thwarted by any procedural technicalities. An action may be maintained for judicial redress brought before it by a citizen provided from such action the State will be benefited.”

In *SN Goswami v. Bangladesh*⁵ an Advocate and another person filed writ petition challenging the appointment of some Judges as Judges of the Appellate Division, the High Court Division negatived their *locus standi*, observing, “This concept of aggrievedness is somehow relaxed in certain special circumstances when it comes to public interest litigation. But even in case of public interest litigation the petitioner must have sufficient interest.”

5.168 Interim order. The principle which is followed in respect of granting bail cannot apply in respect of preventive detention cases.⁶

¹ *Ekushey Television Ltd. v. Dr. Chowdhury Mahmood Hasan*, 55 DLR (AD) 26

² 55 DLR 171

³ 54 DLR (AD) 130

⁴ 26 DLR (AD) 44

⁵ 55 DLR 332

⁶ *Golam Mohammad v. Bangladesh*, 54 DLR 405

5.170 Refund of tax. The collection of excess customs duty being illegal, the Government is under obligation to refund the excess notwithstanding the lapse of three years.¹

5.172 Writ jurisdiction against whom available. In *Zakir Hossain v. Bangladesh & others*² the petitioner complained of breach of contract by Grameen Phone in realising service charges and the court held the writ petition maintainable upon a view that Grameen Phone acts as an agent and licensee of the Government. In *Global Access Ltd v. Bangladesh*³ a writ petition challenging the action of the Board of Directors of a company was found not maintainable even though the Governor and Deputy Governor of Bangladesh Bank were members of that Board inasmuch they were not performing any function in the affairs of the Republic or any local authority while acting a directors of the company.

5.201 Power to do complete justice. Even though the High Court Division did not take into consideration certain affidavit, the Appellate Division may in exercise of its power to do complete justice may take into consideration statements of such affidavit, *Ekushey Television Ltd v. Dr. Chowdhury Mahmood Hasan*⁴

5.205 Review. A decision does not call for review of judgment unless the decision is on a question of great public importance.⁵ In *Ekushey Television v. Dr. Chowdhury Mahmood Hasan*⁶ the appellate Division held that it is a fundamental principle of review is that an error as a necessary ground for review must be one which is apparent on the face of the record and so obvious that keeping it on record will be legally wrong. The contention that the court has gone wrong in the application of law to the facts or the exposition of law is erroneous (unless it lays down a bad law) or that inference is drawn on appraisal and appreciation of evidence is erroneous does not constitute valid grounds for review. The court further held that a review may be in order if there has been change of the factual situation and stated that "the conspectus of facts on which the decision is founded is always critical. In a granted situation the

¹ *Mostafa Kamal v. Collector of Customs*, 7 BLC 524

² 55 DLR 130

³ 55 DLR 433

⁴ 55 DLR (AD) 26

⁵ *Manoj Kumar v. Bangladesh*, 7 BLC (AD) 42

⁶ 55 DLR (AD) 26

conclusion remains critical impeccable. But if it can be shown that the situation differs from that which was taken for granted at the time of hearing of the appeal or the petitions for leave to appeal the decision in a review petition may be different.”

5.227 Disobedience to the order of the court. Where the contemner flouted the order of the court, he was convicted and sentenced to imprisonment of six months and gave direction to implement the order of the court, observing, “It is well settled that in appropriate case the mere imposition of imprisonment or fine or both may not meet the ends of justice and there may be necessity to pass an order to purge the contempt by directing the contemner to implement the judgment immediately and further issuing directions for enforcing the same.”¹

¹ *Farooque Hossain v. Iqbal Hossain*, 8 BLC 204