

**In the International Crimes (Tribunal -1),  
ICT-BD Misc. Case No. 01 of 2015  
The State Versus Md. Tajul Islam and others**

**Order No.12**

**Dated: 04.05.2015**

Today is fixed for passing an order in the above noted miscellaneous case.

Facts figured in the application by the petitioner are summarized as below:

The Chief Prosecutor of the International Crimes Tribunals [BD] as the petitioner presented a contempt petition along with a copy of the video footage before this Tribunal under section 11(4) of the International Crimes (Tribunals) Act, 1973 [hereinafter referred to as ‘the Act of 1973’] read with Rule 45 of the International Crimes (Tribunal-1) Rules of Procedure, 2010 [hereinafter referred to as ‘the Rules of Procedure, 2010’] against the opposite parties [opposite party nos. 1-7] on the allegation that on 30.12.2014 after the pronouncement of the judgment in A.T.M. Azharul Islam’s case [ICT-BD Case No. 05 of 2013] they made some contemptuous remarks in front of the medias which were aired live over different electronic and digital medias and also were published in the front pages of different news papers on 31.12.2014.

Having heard the learned prosecutor Mr. Zead-Al-Malum and gone through the contempt petition along with the annexed paper clippings this Tribunal was initially convinced to issue show cause notice upon the opposite party nos. 1, 3-7 to explain within two weeks as to why contempt proceeding under section 11(4) of the Act of 1973 read with Rule 45 of the Rules of Procedure, 2010 would not be initiated against them.

On getting show cause notice the opposite party no. 1, Advocate Md. Tajul Islam, appeared before the Tribunal through his counsel by submitting an application tendering unqualified and unconditional apology. The opposite party no. 1 in his application has stated, *inter alia*, that he has made a grave error and as such he has thrown himself at the mercy of this Hon'ble Tribunal. He has not offered any explanation for his actions and has prayed for acceptance of his unqualified and unconditional apology.

The opposite party nos. 3-5 and 6-7 also appeared before the Tribunal through their counsels by submitting two separate replies to the show cause notice. Besides, opposite party nos. 3-5 have submitted two supplementary replies and opposite party nos. 6-7 have submitted one supplementary reply in addition to their earlier respective replies. The contents of the replies of the opposite party nos. 3-5 and 6-7 are almost similar in nature. The long and the short of those replies and

supplementary replies is that the opposite party nos. 3-7 have not committed any contempt of court. They have shown due respect for the processes of the Tribunal. They have only exercised their democratic right to criticize the government, therefore, the contempt petition may be rejected in the interest of justice.

Mr. Taposh Kanti Baul, the learned prosecutor in support of the application for contempt of court submitted that opposite party no. 1, Advocate Md. Tajul Islam with an intent to malign the image of the Tribunal had made some contemptuous remarks in an interview before the medias, both electronic and print, soon after the pronouncement of its judgment in A.T.M. Azharul Islam's case [ICT-BD case No. 05 of 2013] on 30.12.2014 which were aired live over the different electronic and digital medias and were also circulated at the front pages of different newspapers [print media] on the following day. Relevant remarks of opposite party no. 1, published in the Daily Sangram dated 31.12.2014, are quoted below:

“ আজাহারকে শাস্তি তো দূরে বাদী পক্ষের  
Sclj jej qJuj E00a 0Rm- HX. a;Sm Cpmij

\*দেড় থেকে ৬ কিলো দূর থেকে সাক্ষ্য ফাঁসি দেয়া হয়েছে \* রাষ্ট্রপক্ষের  
সাক্ষ্য ও দলিলাদি ডাস্টবিনে ফেলার মতো

স্টাফ রিপোর্টারঃ জামায়াতে ইসলামীর সহকারী সেক্রেটারি জেনারেল H 0/  
Hj BSqjil ইসলামের বিরুদ্ধে ট্রাইব্যুনালের দেয়া রায়ের প্রতিক্রিয়ায়  
ডিফেন্স টিমের অন্যতম আইনজীবী এডভোকেট তাজুল ইসলাম বলেছেন,

ফাঁসির যেসব পক্ষীর সাক্ষ্যের ভিত্তিতে আজহারুল ইসলামের ফাঁসি হয়েছে এসব ডকুমেন্ট ডাষ্টবিনে ছুড়ে ফেলে দিলে সুবিচার হতো। সাংবাদিকদের প্রশ্নের জবাবে তিনি আরো বলেন, যেসব সাক্ষ্য ও প্রমাণের ভিত্তিতে আজহারুল ইসলামকে ফাঁসির রায় দেয়া হয়েছে তা এক ‘Aøj B00kšeL OVej’ বলেও মনে করেন তিনি।

রায় ঘোষণার পর তাৎক্ষণিক প্রতিক্রিয়ায় তিনি আরো বলেন, আজহারের বিরুদ্ধে X>jtfa সাক্ষ্য প্রমাণগুলোর ভিত্তিতে তার ফাঁসি তো দূরের কথা, রাষ্ট্র পক্ষকে জরিমানা করা উচিত ছিল। NaL;im j%mh;l B;ŠtaL AfI;id Včhfe;im-১ এ টি এম আজহারের মামলায় মৃত্যুদণ্ডের I;ju 0;ioZ;l fl pংবাদিকদের কাছে দেয়া এক প্রতিক্রি;ju taE H মন্তব্য করেন।

এডভোকেট তাজুল ইসলাম বলেন, যেসব সাক্ষ্য ও দালিলিক প্রমাণের ভিত্তিতে আজহারুল ইসলামকে ফাঁসি দেয়া হয়েছে, pph p;rE ও দালিলিক কাগজপত্র যদি ডাষ্টবিনে ফেলা হতো তাতে সুবিচার হতো। তিনি আরো বলেন, আমরা আজহারুল ইসলামকে দেয়া রায়ের বিরুদ্ধে সুপ্রিম কোর্টে যাবো, আপিল করবো। আজহারুল সাহেবও এই সম্মতি দিয়েছেন। আমরা মনে করি, আপিল বিভাগে নিশ্চয়ই nE;ju thQ;l LI; হবে। এটিএম আজহারের এই আইনজীবী বলেন, একাত্তরে পাকিস্তানী সেনাদের সঙ্গে ট্রেন থেকে আজহারকে নামতে যে তিনজন দেখেছেন বলে ট্রাইব্যুনালে সাক্ষ্য দিয়েছেন, তাদের কেউ দেখেছেন ৬ কিলোমিটার দূর থেকে, কেউ ৩ কিলোমিটার, আবার কেউ দেখেছেন দেড় কিলোমিটার দূর থেকে। এসব সাক্ষ্যের মাধ্যমে মৃত্যুদণ্ড ঘোষণা করা ‘Aøj B00kšeL OVej’ বলে আমরা মনে করি। তাজুল ইসলাম বলেন, এ মামলায় কোনো সাক্ষী ছয় কিলোমিটার দূর থেকে দেখেছেন আজহার পাকবাহিনীর সঙ্গে ছিলেন। এ ধরনের সাক্ষীর জবানবন্দীর ভিত্তিতে তাকে ফাঁসি দেয়া হলো।

তিনি বলেন, রায়ে আমরা সন্তুষ্ট নই। রাজনৈতিক আবেগত্যাড়িত হয়ে বিচার করার কোনো সুযোগ আদালতের নেই। ট্রাইব্যুনালের রায় সঠিক হয়নি। আমরা মনে করি আদালতের কাজ আদালত করেছে। আমরা ন্যায় বিচারের জন্য উচ্চ আদালতে যাবো। তিনি বলেন, আপিল বিভাগে আশা

করি আজাহার ন্যায় বিচার পেয়ে খালাস পাবেন। যিনি দোষী হয়েছেন তার বক্তব্য স্পষ্ট নয়, অথচ তাও গ্রহণ করা হয়েছে। ইমোশন দিয়ে ন্যায় বিচার করা যায় না। অন্যদিকে প্রসিদ্ধিশনের পক্ষ থেকে এডভোকেট জিয়াদ আল মালুম বলেছেন, এই রায়ে ন্যায় বিচার প্রতিষ্ঠিত হয়েছে। রায়ে আমরা পূর্ণতঃ

Mr. Baul further submitted that on 30.12.2014 opposite party no. 2, Bangladesh Jamaat-e-Islami disrespecting and disobeying the judgment called a country wide dawn to dusk strike [ Hartal] for 31-12-2014 and 01.01.2015. The opposite party no. 3, Moqbul Ahmed, being the acting Ameer of Bangladesh Jamaat-e-Islami, subsequently stated that the judgment against convict A.T.M. Azharul Islam as ‘ a conspiracy of the government to kill’ him and he made the following statements, which were published in the Daily Sangram dated 31.12.2014:

“.....বিবৃতিতে তিনি বলেন, সরকার পরিকল্পিতভাবে জামায়াত নেতৃবৃন্দকে হত্যা করার ষড়যন্ত্র করছে। সরকারের ধারাবাহিক সরকারি শিকার জামায়াতের সহকারী সেক্রেটারি জেনারেল জনাব এটিএম আজাহারুল ইসলাম। সরকার মিথ্যা, বায়োবীয় ও কাল্পনিক অভিযোগে জনাব এটিএম আজাহারুল ইসলামের বিরুদ্ধে সরকারি চার্জের করে নিজেদের দলীয় লোকদের দ্বারা আদালতে মিথ্যা সাক্ষ্য প্রদান করে। -  
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The learned prosecutor further submitted that opposite party no. 4, Professor Muzibur Rahman, being the Acting Nayeb-E-Ameer of Bangladesh Jamaat-e-Islami, subsequently disrespecting and disobeying the judgment announced on 30.12.2014 made a statement in a public

meeting organized by Bangladesh Srameek Kallan Federation which was published in the Daily Sangram dated 31.12.2014 . The relevant portion of the said statement is as under:

“ শ্রমিক কল্যান ফেডারেশনের কেন্দ্রীয় সভাপতি এবং বাংলাদেশ জামায়েতে ইসলামীর নায়েবে আমীর অধ্যাপক মুজিবুর রহমান অবিলম্বে বাংলাদেশ জামায়েতে ইসলামীর সহকারী সেক্রেটারি জেনারেল H W HJ আজহারুল ইসলামের ফাঁসির রায় বাতিল করে অবিলম্বে তাকে মুক্তি দেয়ার জন্য সরকারের প্রতি স্টিমুলেজ

NaLjm j %mhjl বাংলাদেশ শ্রমিক কল্যান ফেডারেশন আয়োজিত এক অনুষ্ঠানে সভাপতির বক্তব্যে তিনি এই দাবি জানান। ফেডারেশনের সাধারণ সম্পাদক অধ্যাপক হারুনুর রশিদ খানের সভাপতিত্বে অনুষ্ঠিত বৈঠকে জনাব মুজিব আরো বলেন, কথিত যুদ্ধাপরাধের বিচারের নামে সরকার গায়ের জোরে সম্পূর্ণ অন্যায়ভাবে জামায়াত নেতা এ টি এম আজহারুল ইসলামের ফাঁসির রায় দিয়ে হত্যার ষড়যন্ত্র করেছে যা মানবাধিকারের চরম লঙ্ঘন। এটিএম আজহারুল ইসলামের কিছু হলে সরকারের চরম মূল্য দিতে হবে বলে তিনি হুশিয়ারি উচ্চারণ করেন।..... ”

Mr. Taposh Kanti Baul, the learned prosecutor also submitted that opposite party no. 5, Dr. Shafiqur Rahman, being the Acting Secretary General of Bangladesh Jamaat-e-Islami, disrespecting and disobeying the above mentioned judgment made a statement stating that the above mentioned judgment against convict A.T.M. Azharul Islam was a conspiracy of the government to kill all the leaders of Bangladesh Jamaat-e-Islami including convict A.T.M. Azaharul Islam , and his said

statement was published in the Daily Sangram dated 31.12.2014. The relevant portion of the statement is quoted below:

“ বাংলাদেশ জামায়াতে ইসলামীর সহকারী সেক্রেটারি জেনারেল এটিএম আজহারুল ইসলামকে হত্যার সরকারি ষড়যন্ত্রের প্রতিবাদে এবং তার মুক্তির দাবিতে গতকাল মঙ্গলবার সারা দেশে জামায়াতে ইসলামী তাৎক্ষণিকভাবে বিক্ষোভ মিছিল বের করলে তাতে বাংলাদেশ বাহিনী অন্যায়ভাবে হামলা চালিয়ে প্রায় ৩০ জন নেতাকর্মী আহত এবং বাংলাদেশ সরকারকে প্রেফতার করার ঘটনার তীব্র নিন্দা ও প্রতিবাদ জানিয়ে বাংলাদেশ জামায়াতে ইসলামীর ভারপ্রাপ্ত সেক্রেটারি জেনারেল ডাঃ শফিকুর রহমান গতকাল এক বিবৃতি প্রদান করেন।”

“ তিনি বলেন, সরকার জামায়াতে ইসলামীর শীর্ষ নেতৃত্বদের বিরুদ্ধে সাজানো মিথ্যা মামলা দায়ের করে তাদের হত্যা করে জামায়াতে ইসলামীকে নেতৃত্বশূন্য করার ষড়যন্ত্র করছে। জামায়াতে ইসলামীর নেতৃত্বদকে হত্যা করে সরকার রাজনৈতিক প্রতিহিংসা চরিতার্থ করতে চায়। এভাবে ষড়যন্ত্র করে নেতাদের হত্যা করে কোন আদর্শবাদী দলকে ধ্বংস করা যায় না। সরকারের এই ষড়যন্ত্র দেশের জনগণ ব্যর্থ করে দিবে। জামায়াতে ইসলামী নেতৃত্বদকে হত্যার ষড়যন্ত্রের বিরুদ্ধে তীব্র আন্দোলন গড়ে তোলার জন্য আমি দেশবাসীর প্রতি আহ্বান জানাচ্ছি। ”

Mr. Baul further submitted that opposite party nos. 6 and 7, Abdul Jabbar and Md. Atiqur Rahman, the President and Secretary General respectively of Islami Chhatra Shibir disrespecting and disobeying the judgment in question made a joint statement denouncing the judgment with hatred which was published in the Daily Sangram dated 31.12.2014. The relevant portion of the said statement is quoted below:

“ শিবিরের প্রতিক্রিয়া  
রাজনৈতিক ছকে সাজানো রায় জনগণ মানে না

জামায়াতে ইসলামী সহকারী সেক্রেটারি জেনারেল এটিএম আজহারুল ইসলামের বিরুদ্ধে রায়কে ঘৃণা ও ধিককারের সাথে প্রাতিষ্ঠানিক করেছেন বাংলাদেশ ইসলামী ছাত্রশিবির। এক যৌথ বিবৃতিতে ছাত্রশিবিরের কেন্দ্রীয় সভাপতি আবদুল জব্বার ও সেক্রেটারি জেনারেল আতিকুর রহমান বলেন যে বিশেষ গোষ্ঠীভিত্তিকভাবে পরিচালিত হচ্ছে তা এই রায়ের মাধ্যমে আবারোও হয়েছে। এটা কোন রায়ের রায় নয়। এ রায় দেশ বিদেশের বিবেকবান কেউ মেনে নিতে পারে না। আমরা এ রাজনৈতিক রায় ঘৃণাভরে প্রত্যাখান করছি।

নেতৃবৃন্দ বলেন, এই রায়ের মাধ্যমে প্রমাণ হয়েছে যাদের সাক্ষীতে তাকে মৃত্যুদণ্ড দেয়া হয়েছে তাদের একজন ৬ কিলোমিটার, একজন ৩ কিলোমিটার, আরেকজন ৩ কিলোমিটার দূর থেকে আজহারুল ইসলামের সম্পৃক্ততা দেখেছেন বলে উল্লেখ করা হয়েছে। এমনকি তারা নিহতদের গ্রামের বা আত্মীয় স্বজনকে নির্লজ্জ মিথ্যা সাক্ষীর ওপর কোন আসামীর মৃত্যুদণ্ড হতে পারে তা সুস্থ-বিবেকবান মানুষ বিশ্বাস করতে পারে না। তাছাড়া প্রসিকিউশনের পক্ষে ১৮ জন সাক্ষীকে অনুমতি দেয়া হলেও আসামীর পক্ষে মাত্র ৪ জনকে অনুমতি দেয়া হয়েছে। প্রসিকিউশন ও তদন্ত সংস্থাকে দেড় বছর সময় দেয়া হলেও আসামী পক্ষকে দেয়া হয়েছে মাত্র ৪ সপ্তাহ। এই মামলা সেই সময় আমলে বিচারক বলা হয়েছিল। যখন বিচার বিভাগের ইতিহাসের কালো অধ্যায় লেখলে সাক্ষীর ফাঁস হয়েছিল এবং এই ক্যালেস্কারির দায় মাথায় নিয়ে বিচারপতি নিজামুল হক পদত্যাগ করেছিলেন। তাছাড়া মামলার পদে পদে ছিল অসংগতি। ন্যায় বিচারের ভিত্তিতে নয় বরং এ রায় আওয়ামী লীগ ও তাদের সহযোগী বিভ্রান্ত শাহবাগী আন্দোলনকারীদের বক্তব্যের প্রতিফলন।

নেতৃবৃন্দ আরও বলেন, বিচার যদি বিশেষ গোষ্ঠীর রাজনৈতিক উদ্দেশ্য বাস্তবায়নের হাতিয়ার হওয়া অব্যাহত রাখে তাহলে এই অবিচারের বিরুদ্ধে উপযুক্ত জবাব দেয়া ছাড়া জনগণের আর কোন পথ খোলা থাকবে না। বিচারের নামে অবিচার অব্যাহত রাখলে এই দেশের বিচার পতির্যক্ত ঘোষণা করবে জনগণ। ন্যায়ব্রষ্ট সাজানো রায়ের বিচার পতির্যক্ত ঘোষণা করবে জনগণ।



Bj I; আশাকরি উচচতর আদালতে এটিএম আজাহরণ Cpm;j Mjm;jp  
পাবেন।

নেতৃবৃন্দ কোন গোষ্ঠীর হত্যার না হয়ে ন্যায়বিচার J BCe  
আদালতের মান রক্ষায় বিচারের নামে অবিচার বন্ধে সংশ্লিষ্ট কর্তৃপক্ষের প্রতি  
Bqh;e Sje;ez”

Mr. Taposh Kanti Baul, the learned prosecutor lastly submitted that the above mentioned allegations made by the opposite parties are ill-motivated, unlawful, abusive and obstructive of justice and contemptuous. Those statements were made merely to scandalize and to create hatred against this Hon’ble Tribunal and its process, and as such, there are sufficient materials on record to initiate a contempt proceeding against the opposite parties under section 11(4) of the Act of 1973 read with Rule 45 of the Rules of Procedure, 2010.

Mr. Ehsan A. Siddique along with Mr. Badrudozza, Mr. Md. Ruhul Quddus, Mr. Mohammad Shishir Monir and Mr. Tariqul Islam, the learned counsels for opposite party no. 1 having placed his application to the show cause notice submitted that opposite party no. 1 is a practicing lawyer who due to lack of circumspection on his part, whilst making the statement of 30.12.2014, it fell within the mischief of contempt. He has now realized that by making such statement he has made himself liable for punishment for contempt of court. He should have been more circumspect on a matter in relation to which a judgment has been passed by this Hon’ble Tribunal. The opposite party no. 1 has

now apologized for not realizing at the time of making such statement that would be regarded as contempt of court. He has the highest regard for this Hon'ble Tribunal and had no intention of scandalizing it. The learned counsel further submitted that the opposite party no. 1 having realized that he committed a contempt of court by making such statement, he has now thrown himself at the mercy of this Hon'ble Tribunal. He has not offered any explanation for his actions and has prayed for acceptance of his unqualified and unconditional apology and exonerate him from the charge of contempt of court.

Mr. A.Y. Masihuzzaman along with Mr. Gazi M.H. Tamim, the learned counsels for opposite party nos. 3-7 having placed their written replies and supplementary replies to the show cause notice submitted that opposite party No. 3 never made any adverse allegation against the Hon'ble Tribunal. He merely stated that the government had made false allegations against convict A.T.M. Azharul Islam and that the prosecution had adduced false witnesses. The opposite party no. 4 only alleged that the government was attempting to take political benefit from the trials before the International Crimes Tribunals . He also alleged that the judgment violated the basic human rights of convict A.T.M. Azharul Islam, a fact which has been reiterated by many human rights organizations and international legal scholars all over the world. The opposite party no. 5 only attacked the role of the government in

harassing and conspiring to kill the leaders of the Bangladesh Jamaat-e-Islami. There was no allegation against the Hon'ble Tribunal in the entirety of the Press Release dated 30.12.2014. The opposite party nos. 6 and 7 merely expressed their disapproval of the judgment passed by the Hon'ble Tribunal against convict A.T.M. Azharul Islam. In expressing their disapproval they were merely relying on the statements made by various human rights organizations and the international criminal law experts.

Mr. A.Y. Masihuzzaman contended that the current judicial trend has been to permit criticisms of judgments and judicial proceedings, even when such statements have clearly been contemptuous. Even the Hon'ble Appellate Division of the Supreme Court of Bangladesh took no steps against contemptuous remarks made against it. There are also instances where this Hon'ble Tribunal also did not take any action against clearly contemptuous statements directed against it. Moreover, the prosecution also did not take any action by filing an application to draw up proceedings for contempt of court.

The learned counsel further submitted that the opposite party nos. 3-7 have never intended to disrespect the processes of the Hon'ble Tribunal and have at all times endeavored to uphold its dignity. These opposite parties have at no stage attacked the Hon'ble Tribunal or any other judicial body. They have only exercised their democratic right to

criticize the government. The instant petition for contempt of court, filed by the prosecution, is not for the purpose of protecting the dignity of this Hon'ble Tribunal, but for a collateral political purpose, and as such, the contempt petition is liable to be rejected in the interests of justice.

Be that as it may, we have heard the learned lawyers of respective parties and considered their submissions. We have also carefully scrutinized the contempt petition along with annexed documents, written replies to the show cause notice along with annexed documents submitted by the opposite party nos. 3-7 and other materials on record.

The moot question that falls for consideration by this Tribunal in the instant proceeding is that whether the alleged statements made by the opposite party nos. 1, 3-7 are *prima facie* contemptuous for which a contempt proceeding may be initiated against them under section 11(4) of the Act of 1973 read with Rule 45 of the Rules of Procedure, 2010.

Before going into the gamut of the case let us first see what are the redeeming features governing the contempt proceeding as a whole. At the very outset we would like to mention here that the Contempt of Court Act, 1926 has not given any definition as such to explain what constitutes an offence of contempt. But it has been defined in sub-section (4) of section 11 of the Act of 1973 which is quoted below:

*“ A Tribunal may punish any person, who obstructs or abuses its process or disobeys any of its order or direction,*

*or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its member into hatred or contempt, or does anything which constitutes contempt of the Tribunal, with simple imprisonment which may extend to one year, or with fine which may extend to Taka five thousand, or with both.”*

The essence of contempt is action or inaction amounting to an interference with or obstruction to or having a tendency to interfere with or obstruct the normal course of administration of justice. Section 11(4) of the Act of 1973 as quoted above is wide and the same is referable even to doing anything which tends to bring the Tribunal or its members into hatred, in addition to obstruction to its process or doing anything which tends to prejudice the case before it. The phrase ‘doing anything’ refers to publication, speech or comments whether by words spoken or written or even by signs or by visible representations which scandalizes or tends to scandalize, or lowers or tends to lower the authority of the Tribunal or prejudices or interferes or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner. Criminal contempt of court may also consist the acts committed out of court *ex facie curie* such as publishing matter or indulging in

conduct likely to prejudice the fair trial of pending proceedings. In this type of case, actual intention to prejudice the proceeding is immaterial.

On perusal of the above quoted statement made by opposite party no. 1, Advocate Md. Tajul Islam it appears that he said in the statement that the prosecution submitted false, fabricated and unrealistic materials as evidence before this Tribunal against convict A.T.M. Azharul Islam, and justice would have been done if those evidence/materials would have been thrown out to the dustbin, and convicting A.T.M. Azharul Islam on the basis of those documents and evidence is the ‘eighth wonder’ [Aøj B00kSeL 0Vej] of the world , and rather than convicting A.T.M. Azharul Islam , this Tribunal should have penalized the complainant / prosecution for falsely implicating and accusing that accused person. The core content of the said statement made by the opposite party no. 1 questions the transparency and fairness of the judicial proceedings before the Tribunal and also justification of the order of convicting and sentencing a person [A.T.M. Azharul Islam] who was charged with the offences as specified under section 3(2) of the Act of 1973. The way the opposite party no. 1 expressed his concern, by making a statement before the medias, both electronic and print, on the matter arising out of the order convicting and sentencing A.T.M. Azharul Islam for the above mentioned offences appears to have tended

to belittle the authority and institutional dignity of the Tribunal in the mind of public which goes against 'public interest'.

It may be recalled here that this is not the first time a contempt petition is filed against the opposite party no. 1. Previously, this Tribunal issued show cause notice for initiating contempt proceeding against him in the ICT-BD Miscellaneous Case No. 14 of 2012 and ICT-BD Miscellaneous Case No. 15 of 2012, and he tendered unconditional apologies in both the cases which were accepted by this Tribunal warning him to be careful in future.

In view of the above discussion it appears that it has become a usual habit of the opposite party no. 1 to make scandalizing statements and comments against the dignity and honour of the Tribunal, and as such, the statement in question was made only to scandalize this Tribunal and to undermine the confidence of the people in the integrity of this Tribunal. So, he has committed contempt of court which is punishable under section 11(4) of the Act of 1973. Moreover, being one of the conducting lawyers of the accused, his such remarks before the medias are tantamount to professional misconduct as contemplated in The Bangladesh Legal Practitioners and Bar Council Order and Rules, 1972.

It may be reiterated here that the opposite party no. 1 by submitting an application to the show cause notice has tendered

unconditional apology. An apology usually mitigates the offence of contempt of court when it must come from the heart of the contemner, and when it is unqualified the court may accept it. Unless the contempt is of a very gross nature, the court is generally inclined to accept apology from the contemner. Where the violation of the court's order is deliberate and pre-planned indicating certain defiant attitude on the part of contemnners, the court may refuse to accept the unqualified apology. An apology is not a weapon of defence forged to purge the guilt of the offender, nor it is intended to operate as panacea. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power. Such an apology to be acceptable must be sincere, unqualified and should be tendered at the earliest opportunity.

In the instant case we find that the opposite party no. 1 has tendered unconditional apology at the earliest stage immediately after receiving show cause notice. Besides , he has stated that he has realized his mistakes in making the contemptuous statement and has thrown himself at the complete mercy of this Tribunal. He has not offered any explanation for his said statement and has regretted his contemptuous actions. It may be mentioned here that when the instant contempt petition was being pressed by Mr. Zead-Al-Malum, the learned



prosecutor on 12.01.2015 the opposite party no. 1 was physically present before this Tribunal and he then instantly verbally prayed unqualified and unconditional apology to that effect. He has also resolved not to repeat contumacious actions. So, we believe that the opposite party no.1 has tendered his unconditional apology at least this time from his heart and not from the pen. Since he has expressed remorse and thrown himself at the mercy of this Tribunal, his unconditional apology may be accepted by us. Though this Tribunal has ample authority to punish the opposite party no. 1, but it intends to take lenient view in giving him an opportunity again to rectify himself without punishing him as he has expressed remorse and thrown himself at the mercy of this Tribunal.

With the aforesaid observations and findings we accept the unconditional apology tendered by the opposite party no. 1 and exonerate him from further prosecution with a warning that he shall be more careful, cautious and respectful in making any statement/comment with regard to the judicial proceedings or the Judiciary or the Judges or the Tribunals/Courts of Bangladesh in future, and re-occurrence of such untoward incident shall be strictly dealt with in accordance with law.

Let us now consider whether the statements/comments made by the opposite party nos. 3-5 are contemptuous or not. It is alleged by the prosecution, *inter alia*, that the statements / comments in question made by the opposite party nos. 3-5 are contemptuous as they disrespecting

and disobeying the judgment passed on 30.12.2014 by this Tribunal against A.T.M. Azharul Islam made statements stating that the judgment against convict A.T.M. Azharul Islam as “ a conspiracy of the government to kill” all the leaders of Bangladesh Jamaat-e-Islami including convict A.T.M. Azharul Islam. The opposite party nos. 3-5 have denied the said allegations by filing a joint reply. We have gone through the allegations, stated in the contempt petition, brought against the opposite party nos. 3-5 and their written reply thereto and heard the learned lawyers of both the parties. It appears from the statements in question, as quoted earlier, made by the opposite party nos. 3-5 that opposite party no. 3 made statement that the government had made false allegations against convict A.T.M. Azharul Islam and that the prosecution had adduced false witnesses. The opposite party no. 4 alleged that the government was attempting to take political benefit from the ongoing trials before the Tribunals. The opposite party no. 5 only attacked the role of the government in harassing and conspiring to kill the leaders of the Bangladesh Jamaat-e-Islami. There is no direct allegation in the statements in question of the opposite party nos. 3-5 against the Tribunal. They have at no stage directly attacked the Tribunal or any other judicial body, rather they have criticized the government. It may be mentioned here that opposite party nos. 3-5 made the said statements just after the pronouncement of the judgment against convict

A.T.M. Azharul Islam by this Tribunal. The said judgment was not given by the government, but this Tribunal. So, the criticism of the judgment indirectly goes against this Tribunal.

Mr. A.Y. Masihuzzaman, the learned counsel for opposite party nos. 3-7, contended that there are some instances where this Hon'ble Tribunal did not take any action against clearly contemptuous statements directed against it. Moreover, the prosecution also did not take any action by filing an application to draw up proceedings for contempt of court. So, no contempt proceeding should be drawn against the opposite party nos. 3-5 for their alleged statements. This contention of the learned counsel has no leg to stand, because non-drawal of contempt proceeding against a contemner(s) does not *ipso facto* create immunity to all other contemnors from drawing contempt proceedings against them. Though the opposite party nos. 3-5 by making their statements in question did not attack the Tribunal directly, but they should have been more cautious and careful in making those statements as they were related to the judicial proceedings, i.e. the judgment given by this Tribunal against convict A.T.M. Azharul Islam.

With the aforesaid observations we accept the joint reply submitted by the opposite party nos. 3-5 and exonerate them from further prosecution with a note that they shall be careful, cautious and

respectful in making any statement/comment with regard to judicial proceedings or the Judges in future.

The allegation brought in the instant contempt petition against the opposite party nos. 6 and 7 is that they disrespecting and disobeying the judgment announced on 30.12.2014 by this Tribunal against convict A.T.M. Azharul Islam made a joint statement denouncing the judgment with hatred. The said statement has been quoted here earlier where opposite party nos. 6 and 7 stated amongst others that it was again proved through said judgment that the whole trial was being directed politically with the beckoning of an interested quarter, and the said judgment was not for fair justice. It was proved in different ways that the said judgment was unjust and unfair. A man of conscience cannot believe that a death sentence could be awarded to an accused on the basis of such shameless and false evidence. That judgment was not given on the basis of fair justice, but the reflection of the speeches of the Awami League and their alliance destructed agitators of Shahbag. The opposite party nos. 6 and 7 also stated in their said statement that if such trial continues as a weapon of an interested quarter to execute their political revenge, then the public would have no other way but to give proper reply against such injustice. The joint statement containing such remarks made by the opposite party nos. 6 and 7, which was published on 31.12.2014 in the Daily Sangram, *prima facie* appears to be

extremely derogatory to the independence and image of the Tribunal [ICT-1], a lawfully constituted court of law, and a serious threat intending to interfere and demean the lawful authority and the normal course of administration of justice of the Tribunal . Such remarks also *prima facie* touch the very credibility and majesty of the Tribunal which we think to have also stained public confidence about the fairness of the trials, relating to charges of Genocide, War Crimes, Crimes against Humanity, etc as specified under section 3(2) of the Act of 1973, pending before the Tribunal with those contemptible comments.

Considering the circumstances mentioned above, we are of the view that there have been *prima facie* elements of contempt of court in the alleged statements / remarks made by the opposite party nos. 6 and 7, which were published in the Daily Sangram dated 31.12.2014 , which warrant to initiate contempt proceeding against them under section 11 (4) of the Act of 1973 read with Rule 45 of the Rules of Procedure, 2010. Thus, the joint reply to the show cause notice submitted by the opposite party nos. 6 and 7 is rejected and the contempt proceeding under section 11(4) of the Act of 1973 read with Rule 45 of the Rules of Procedure, 2010 is hereby initiated against them.

Accordingly, (1) Abdul Jabbar, President, Central Committee, Islami Chhatra Shibir, Bangladesh, and (2)Md. Atiqur Rahman, Secretary General, Central Committee, Islami Chhatra Shibir,

Bangladesh [opposite party nos. 6 and 7], the contemnners are hereby directed to show cause within 3(three) weeks from the date as to why they shall not be punished for making derogatory statements / remarks which were published in the Daily Sangram dated 31.12.2014 that constitute contempt of the Tribunal.

Since these two opposite parties have already appeared in this case through their counsel, service of show cause notice upon them in person is not required.

Let it be fixed on 24.05.2015 for further order.

**(M. Enayetur Rahim, Chairman)**

**(Jahangir Hossain, Member)**

**(Anwarul Haque, Member)**