

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice Borhanuddin

Mr. Justice M. Enayetur Rahim

Ms. Justice Krishna Debnath

CIVIL REVIEW PETITION NO.08 OF 2020

(Arising out of civil petition for leave to appeal Nos.971 of 2014)

(From the order dated the 24th day of November, 2016 passed by this Division in Civil Petition No.971 of 2014)

Durnity Daman Commission : Petitioner

-Versus-

Md. Ashraful Haque and others : Respondents

For the Petitioner : Mr. Md. Khurshid Alam Khan,
Senior Advocate instructed by
Mr. M. Soyeb Khan, Advocate-
on-Record

For the Respondent No.1 : Mr. Md. S.M. Shajahan, Senior
Advocate instructed by Mr.
Shadhan Kumar Banik, Advocate-
on-Record

For the Respondent Nos.2-3 : Not represented

Date of Judgment : **The 30th day of June, 2022**

JUDGMENT

M. Enayetur Rahim, J: This review application under article 105 of the Constitution of the People's Republic of Bangladesh is directed against the order dated 24.11.2016 passed by this Division in civil petition for leave to appeal No.971 of 2014 disposing the same with observations.

Facts, relevant for disposal of the review petition are as follows:

The present Respondent No.1 (**hereinafter referred to as writ petitioner-respondent**) filed writ petition No.7314 of 2011

under article 102 of the Constitution of the People's Republic of Bangladesh before the High Court Division challenging the proceedings contain in Memo No. দুদক/স-জকা/ঢাকা-১/২৬০৫ dated 07.08.2011 issued by the writ respondent No.3 directing the writ petitioner-respondent to submit records in connection of his wealth statement.

In the writ petition it is contended that the writ respondent No.3 as an inquiry officer issued a notice being Memo No. দুদক/স-জকা/ঢাকা-১/১৭৪৬ dated 19.10.2010 to the writ petitioner-respondent asking for submitting some records of wealth of the writ petitioner-respondent and to make appearance before him on 26.10.2010 at 10.00 a.m..

In response to the said notice/memo dated 19.10.2010 the writ petitioner-respondent submitted the written wealth statement before the writ respondent No.3 on 07.11.2010 and accordingly the writ respondent No.3 accepted the said written statement of wealth.

Thereafter, the writ respondent No.2 issued a notice being Memo No. দুদক/স-জকা/ঢাকা-১/৬৫১ dated 24.04.2011 to the writ petitioner-respondent by exercising power under section 26(1) of the Anti-Corruption Commission Act,2004 asking him to submit his wealth statement.

Thereafter, the writ petitioner-respondent prayed time for submitting the statements of wealth on 23.05.2011 and 25.05.2011 respectively and the writ respondent No.2 allowed 07(seven) days time for submitting the same by his memo dated 31.05.2011.

Thereafter, the writ petitioner-respondent on 31.05.2011 submitted wealth statement before the writ respondent No.2 along with his family members statements of wealth on prescribed form.

Eventually, the writ respondent No.3 as an inquiry officer issued a notice being Memo No.দুদক/স-জকা/ঢাকা-১/২৬০৫ dated 07.08.2011 to the writ petitioner-respondent asking him to submit some records of wealth and to make appearance before him on 16.08.2011 at 10.00 a.m..

Having received the above notice the writ petitioner-respondent challenged the same before the High Court Division by filing the above writ petition.

A Division Bench of the High Court Division initially issued a Rule Nisi and after hearing the Rule by its judgment and order dated 13.06.2013 discharged the Rule relying on the case of **Md. Shahidullah Mia Vs. Government of Bangladesh and others** in connection with writ petition No.940 of 2011.

Against the said judgment and order the writ petitioner-respondent filed civil petition for leave to appeal No.971 of 2014 before this Division and this Division after hearing disposed of the same with the observations as under:

"The matter relates to issuance of notice upon the writ petition for submitting wealth statement. We noticed from the record that 3(three) successive notices have been served upon the writ petitioner, of them, 2 notices were issued by the same officer of the Commission. If the Commission is not satisfied with the wealth statement, there is provision for filling case against the writ petitioner, but the Commission cannot issue repeated notice upon any person for submitting wealth statement. This is a malafide act on the part of Durnity Daman Commission. We direct the Chairman of Durnity Daman Commission to take legal action against the officers who intentionally issue such notices. The judgment of the High Court Division is quashed."

Feeling aggrieved by the above findings and observations, the writ respondent-Durnity Daman Commission

(herein after referred to as the Commission) has filed this review petition.

Mr. Md. Khurshed Alam Khan, learned Senior Advocate, appearing for the present petitioner submits that the issuance of notice for gathering information regarding the wealth statements is necessary for conducting the inquiry/investigation and as such, issuance of successive notices do not mean harassment; hence, question of malafide act on the part of the Commission does not arise at all.

Mr. Khan further submits that the impugned notice has been issued in view of section 19/20 of the Anti-Corruption Commission Ain, 2004 **(hereinafter referred to as Ain, 2004)** read with rule 20 of the Anti-Corruption Commission Rules, 2007 **(hereinafter referred to as Rules, 2007)** and section 160 of the Code of Criminal Procedure. There is no legal bar to issue successive notices for collecting information regarding the allegations made in the complaint and it is not possible for the Commission to ascertain whether the wealth is disproportionate to know source of the writ petitioner-respondent's income or not and as such, question of malafide act of the issuance of successive notices by the Commission does not arise at all and as such the impugned order is required to be reviewed.

However, Mr. S.M. Shahjahan, learned Senior Advocate, appearing for the writ petitioner-respondent having supported the impugned order passed by this Division has submitted that in guise of inquiry or investigation, as the case may be a citizen cannot be harassed by the investigating agency i.e., the Commission.

We have heard the learned Advocates for the respective parties, perused the impugned order and notice as well as the relevant provision of law and Rules.

In the instant case the petitioner Commission served a notice on 07.08.2011 upon the writ petitioner-respondent, which was as under:

“দুর্নীতি দমন কমিশন

সমন্বিত জেলা কার্যালয়

ঢাকা-১।

(দুর্নীতি দমন কমিশন আইন-২০০৪ ও দুর্নীতি দমন কমিশন বিধিমালা, ২০০৭ দ্রষ্টব্য)

স্মারক নং-দুদক/সজেকা/ঢাকা-১/২৬০৫ তারিখ-৭/৮/১১

প্রাপক, জনাব মোঃ আশরাফুল হক

বাড়ী নং-৯, রোড নং-২৩ এ,

সেকশন-১২বি, বনানী, ঢাকা-১২১৩।

বিষয়: অনুসন্ধানের স্বার্থে তথ্যাদী সরবরাহ প্রসঙ্গে।

সূত্র: দুর্নীতি দমন কমিশন, সমন্বিত জেলা কার্যালয়, ঢাকা-১ এর ই/আর নং-৪৬/১১।

অনুসন্ধানাধীন ব্যক্তি/ব্যক্তিবর্গের পরিচিতি এবং অভিযোগের সংক্ষিপ্ত বিবরণঃ

জনাব মোঃ আশরাফুল হক এর বিরুদ্ধে জ্ঞাত আয় বহির্ভূত সম্পদ অর্জনের অভিযোগ।

সূত্রে উল্লিখিত অভিযোগের সুষ্ঠু অনুসন্ধানের স্বার্থে নিম্নবর্ণিত রেকর্ডপত্র/কাগজপত্র পর্যালোচনা করা একান্ত প্রয়োজন।

অতএব, আগামী ১৬/০৮/২০১১ খ্রিঃ তারিখ ১০.০০ টার সময় দুর্নীতি দমন কমিশন সমন্বিত জেলা কার্যালয়, ঢাকা-১, এর নিকট নিম্ন বর্ণিত রেকর্ডপত্র/কাগজপত্র সরবরাহের জন্য আপনাকে বিশেষভাবে অনুরোধ করা হলো।

উল্লেখ্য যে, সংশ্লিষ্ট রেকর্ডপত্র/কাগজপত্র যথাসময়ে আপনার নিকট/দপ্তরে ফেরত দেওয়া হবে। রেকর্ডপত্র হস্তান্তরের সময় উহার ছয়ালিপি আপনার নিকট/দপ্তরে রাখা যেতে পারে।

সংশ্লিষ্ট রেকর্ডপত্রের বিবরণঃ

গত ৩১/৫/২০১১ খ্রিঃ তারিখে সচিব, দুর্নীতি দমন কমিশন, প্রধান কার্যালয়, ঢাকা বরাবর আপনার দাখিলকৃত সম্পদ বিবরণীতে বর্ণিত স্থাবর-অস্থাবর সম্পদের অর্জন ও উৎস সংশ্লিষ্ট রেকর্ডপত্র।

মোঃ আনোয়ারুল হক

অনুসন্ধানকারী কর্মকর্তা

ও সহকারী পরিচালক

দুর্নীতি দমন কমিশন

সমন্বিত জেলা কার্যালয়, ঢাকা-১।

মোবাঃ ০১৯১৮৯২৩৯০১।”

(Underlines supplied)

Though High Court Division held that the Commission has got the power to issue such a notice but this Division by the impugned order did not endorse the said view, rather disposed

of the same holding that if the Commission is not satisfied with the wealth statement there is provision of filing case against the writ petitioner, but the Commission cannot issue repeated notices upon any person for submitting wealth statement. This is a malafide act on the part of the Commission.

This Division further directed the Chairman of the Commission to take legal action against the officers who intentionally issued such notices and also quashed the judgment of the High Court Division.

To decide the issue involved in the case it is necessary to examine rule-8 & 11 of the Rules, 2007 which run as follows:

“৮। অনুসন্ধানকার্য চলাকালে অভিযুক্ত ব্যক্তির শুনানী গ্রহণ।-(১) দুর্নীতি বিষয়ক কোন অভিযোগের অনুসন্ধান চলাকালে কমিশন বা কমিশন কর্তৃক ক্ষমতাপ্রাপ্ত কোন কমিশনার বা কর্মকর্তা যদি মনে করে যে, অভিযোগের সহিত সংশ্লিষ্ট ব্যক্তির বক্তব্য শ্রবণ করা প্রয়োজন তাহা হইলে অভিযুক্ত ব্যক্তিকে লিখিত নোটিশ প্রদান করিয়া নোটিশে উল্লিখিত সময়সীমার মধ্যে মৌখিক বা লিখিত বক্তব্য পেশ করিবার সুযোগ প্রদান করিতে পারিবে।

(২) উপ-বিধি (১) এর অধীন নোটিশপ্রাপ্ত ব্যক্তি তাহার বিরুদ্ধে আনীত অভিযোগ খণ্ডন করিয়া নোটিশে নির্দেশিত সময়সীমার মধ্যে ব্যক্তিগতভাবে বা তাহার নিয়োজিত আইনজীবীসহ মৌখিক বা লিখিত বক্তব্য পেশ করিতে পারিবে এবং উক্তরূপে বক্তব্য পেশ করা হইলে সংশ্লিষ্ট কমিশনার বা কর্মকর্তা উহা সংশ্লিষ্ট নথিতে অর্ন্তভুক্ত করিবেন।”

৯।.....।

১০।.....।

১১। তদন্তকার্য চলাকালে অভিযুক্ত ব্যক্তির শুনানী গ্রহণ।-(১) দুর্নীতি বিষয়ক কোন অভিযোগের অনুসন্ধান শেষ হওয়ার পর অভিযোগ প্রাথমিকভাবে প্রতিষ্ঠিত হইলে তদন্ত চলাকালে কমিশন যদি মনে করে যে, অভিযোগের সহিত সংশ্লিষ্ট ব্যক্তির বক্তব্য শ্রবণ করা প্রয়োজন তাহা হইলে অভিযুক্ত ব্যক্তিকে লিখিত নোটিশ প্রদান করিয়া নোটিশে উল্লিখিত সময়সীমার মধ্যে মৌখিক বা লিখিত বক্তব্য পেশ করিবার সুযোগ প্রদান করিতে পারিবে।

(২) উপ-বিধি (১) এর অধীন নোটিশপ্রাপ্ত ব্যক্তি তাহার বিরুদ্ধে আনীত অভিযোগ খন্ডন করিয়া নোটিশে নির্দেশিত সময় সীমার মধ্যে ব্যক্তিগতভাবে বা তাহার নিয়োজিত আইনজীবীসহ মৌখিক বা লিখিত বক্তব্য পেশ করিতে পারিবে এবং উক্তরূপে বক্তব্য পেশ করা হইলে সংশ্লিষ্ট কমিশনার বা কর্মকর্তা উহা সংশ্লিষ্ট নথিতে অন্তর্ভুক্ত করিবেন।”. **(Underlines supplied)**

From the above rules it is abundantly clear that in course of inquiry or investigation, as the case may be, the Commission has got the power to issue notice upon the person(s) against whom an inquiry or investigation is going on to appear before the Commission for giving him a chance to hear and to place or submit his written or verbal statement and connecting documents with regard to the allegation brought against him.

The provision of Section 26 of the Ain, 2004 is as follows:

“Declaration of assets.-(1) Whenever the Commission, on any information and after conducting such 2[inquiry] as it may deem necessary, is satisfied that any person or any other person on his behalf is in possession or has acquired any property disproportionate to his legal source of income, the Commission may, by order in writing, direct that person to furnish statement of his assets and liabilities including any other information specified in that order in the manner prescribed by the Commission.

(2) If any person-

(a) fails to submit a written statement or an information in compliance with the order mentioned under sub-section (1) after receipt of the same or submits any written statement or any information which for sufficient reasons is considered false or baseless, or

(b) submits any book, accounts, record, declaration, return or any document under sub-section (1) or gives any statement which, for sufficient reasons, is considered false or baseless, he shall be punished with imprisonment for a term which may extend to

3(three) years, or with fine, or with both.” **(Underlines supplied)**

If, we meticulously examine the above provision, then it will be crystal clear that prior giving notice under section 26 of the Ain,2004 the commission has got the power to make an inquiry. Further, the Commission, if after receiving the statement furnished by the concerned person(s) pursuant to the notice under section 26 of the Ain,2004 is not satisfied, then as per rule 6 of the Rules,2007 the Commission for the purpose of holding inquiry is empowered to appoint an inquiry officer, and in course of inquiry the Commission or concerned officer as authorized to do so is also empowered to issue notice as per provision of rule 8 of the Rules,2007 upon the concerned person(s) for the purpose of inquiry asking him to submit or place his written or verbal submissions and the relevant documents.

Thus, notice under section 26 of the Ain,2004 and notice for the purpose of inquiry in view of rule 8 of the Rules, 2007 is quite different and distinguishable.

Upon perusal of the notice, impugned before the High Court Division, Annexure-F to the writ petition it reveals that in the notice subject matter of the notice (বিষয়) has been described as ‘বিষয়ঃ অনুসন্ধানের স্বার্থে তথ্যাদি সরবরাহ প্রসঙ্গে’. And in the said notice the writ petitioner-respondent was asked to provide the documents in support of his wealth statement submitted pursuant to the notice under section 26 of the Ain,2004.

So, it is clear that the notice has been issued upon the writ petitioner-respondent for the purpose of proper and effective inquiry and the writ petitioner-respondent was asked to submit/provide the documents in support of his

wealth statement submitted before the commission in pursuant to the notice under section 26 of the Act,2004.

We have no hesitation to hold that this procedure of inquiry by the Commission is very fair, transparent and accountable and this procedure is for the benefit of the person(s) against whom an inquiry is going on. In course of inquiry the concerned person(s) is getting chance of being heard before the inquiry officer to defend himself. Similarly, after filling of the case during investigation period Rule 11 of the Rules,2007 provides similar provision for defending an accused in an investigation process.

Further, section 19 of the Act, 2004 has empowered the Commission to do anything prescribed for carrying out of purpose of the Ain,2004.

Section 19 of the Ain,2004 runs as follows:

"19. Special Powers of the Commission in respect of inquiry or investigation.-(1) The Commission shall have the following powers in respect of inquiry and investigation, namely:-

- (a) to issue 1[notice to witnesses] and ensure attendance thereof and to examine witnesses;
- (b) to detect and produce any document;
- (c) to take evidence;
- (d) to call for public records or copy thereof from any court or office;
- (e) to issue 1[notice] for examination of witnesses and documents; and
- (f) to do anything prescribed for carrying out the purposes of this Act.

(2) The Commission may require any person to furnish any information regarding a matter of inquiry or investigation and the person so required shall be bound to furnish such information kept under his custody.

(3)if any person causes resistance to any officer legally empowered by the Commission or a Commissioner in exercise of his powers under sub-section (1), or deliberately disobeys any direction given under that sub-section, it shall be a punishable offence and for such offence he shall be punished with imprisonment for a term not exceeding 3 (three) years, or with fine, or with both.” **(Underlines supplied)**

It is our considered view that the word ‘any person’ used in section 19(2) includes the person(s) against whom inquiry or investigation as the case may be is going on.

Similar provision, like section 19 of the Ain, 2004 has also been made in rule 20 of the Rules,2007 empowering the inquiry/investigating officer to take following measures-

ক্রমিক নং	কমিশনের বিশেষ ক্ষমতা	ক্ষমতাপ্রাপ্ত কর্মকর্তা
১	২	৩
(ক)	<u>সাক্ষীর প্রতি নোটিশ জারি ও উপস্থিতি নিশ্চিতকরণ এবং জিজ্ঞেসাবাদ করা।</u>	অনুসন্ধানকার্যের দায়িত্বপ্রাপ্ত কর্মকর্তা, বা তদন্ত কার্যের দায়িত্বপ্রাপ্ত কর্মকর্তা, যে ক্ষেত্রে যাহা প্রযোজ্য।
(খ)	<u>কোন দলিল উদঘাটন এবং উপস্থাপন করা।</u>	অনুসন্ধানকার্যের দায়িত্বপ্রাপ্ত কর্মকর্তা, বা তদন্ত কার্যের দায়িত্বপ্রাপ্ত কর্মকর্তা, যে ক্ষেত্রে যাহা প্রযোজ্য।
(গ)	কোন অফিস হইতে পাবলিক রেকর্ড বা উহার অনুলিপি তলব করা।	অনুসন্ধানকার্যের দায়িত্বপ্রাপ্ত কর্মকর্তা, বা তদন্ত কার্যের দায়িত্বপ্রাপ্ত কর্মকর্তা, যে ক্ষেত্রে যাহা প্রযোজ্য।
(ঘ)	<u>আইনের উদ্দেশ্য পূরণকল্পে নির্ধারিত অন্য যে কোন বিষয়।</u>	সংশ্লিষ্ট বিষয়ে প্রণীত বিধির আওতায় কমিশন বা কমিশন কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তা।

(Underlines supplied)

If we meticulously examine the above two provisions i.e., section 19 of the Act,2004 and 20 of Rules, 2007, coupled with rule 8 and 11 of the above Rules, then we have no hesitation to hold that those provisions have been made for the interest and benefit of a person(s) against whom a inquiry or investigation is going on as he is giving

opportunity to defend himself in inquiry or investigation stage. Thus, there is no room to say that issuance of such notice by the Commission or its authorized officer is harassing, malafide and prejudiced to the concerned person(s).

Earlier, in disposing the leave petition this Division did not take into consideration the above provisions of law and Rules and thus, came to a erroneous decision, which is apparent on the face of the record.

Thus, impugned order is reviewed.

Findings and observations made in the order are hereby expunged. The order of quashment of the proceedings and directing the Commission to take legal action against the officers who issued the notices are set aside.

Accordingly, the review petition is disposed of.

C.J.

J.

J.

J.