

THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman
Mr. Justice Borhanuddin
Ms. Justice Krishna Debnath

CIVIL APPEAL NO.45 OF 2008

(From the judgment and order dated 20.03.2006 passed by the High Court Division in Writ Petition No.7901 of 2002)

Bangladesh Gayan-O-Srijonshil Appellant
Prokashak Samity, Represented
by its Executive Director,
Mozibur Rahman Khoka

=VERSUS=

Bangladesh Publisher and Book Respondents
Seller Association represented
by the Secretary General Md.
Abdur Razzak and others

For the Appellant :Mr. SK. Md. Morshed,
Senior Advocate, instructed
by Mr. Nurul Islam
Bhuiyan, Advocate-on-
Record

For the respondent :Mr. Fida M. Kamal, Senior
Nos.1 and 2 Advocate, instructed by
Mr. Nurul Islam Chowdhury

For the Respondent :Not represented
Nos.3-18

Date of hearing :08.02.2022; 15.02.2022;
22.02.2022 and 06.04.2022

Judgment on :The 12th April, 2022

J U D G M E N T

MD. NURUZZAMAN, J:

This Civil Appeal, by leave, has arisen out of the judgment and order dated 20.03.2006 passed by the High Court Division in Writ Petition No.7901 of 2002 making the Rule absolute.

Facts leading to filing of this civil appeal, in short, are that the respondent Nos.1 and 2 herein as the writ petitioners filed the Writ Petition No.7901 of 2002 before the High Court Division stating, inter-alia, that Bangladesh Publisher and Book Seller Association is an association of the book publishers and sellers and persons engaged in the business of books. It has its own Articles and Memorandum of Association and also has

elected Executive Committee consisting of 27 members.

The said Association was formed for conducting various affairs relating to publication and sale of book and for that purpose several Standing Committee, Sub-Committee have been formed.

Like other Standing Committee, there is a Committee namely, Creative Literature Standing Committee constituted by the Association from amongst its members and the writ respondent Nos.4-15 were Secretaries of various Standing committee and representatives of the Association.

Recently the writ petitioner Nos.1 and 2 came to learn that recommendation was made to the Government for granting Licence to a Samity

under the name and style Bangladesh Gayan-O-Srijonshil Prokashak Samity. The writ petitioners raised objection to the Deputy Secretary and the Director, Trade Organizations, Ministry of Commerce and requested not to grant such licence. On earlier occasion, similar attempt was also made but the same was dropped.

In spite of the said objection, licence No.34 of 2002 dated 17.11.2002 was granted in favour of added respondent No.17-petitioner.

The licence was granted in contravention of the Trade Organizations Ordinance, 1961.

The purposes and objects of the writ petitioner as respondent No.1 Association and those of the added respondent No.17 are similar.

The High Court Division by order dated 14.12.2002 issued Rule and stayed operation of the said impugned licence granted in favour of the added respondent No.17-petitioner, namely, Bangladesh Gayan-O-Srijonshil Prokashak Samity.

The respondent Nos.1 and 2 herein as writ petitioners filed the said writ petition without impleading the added respondent No.17-petitioner herein, Bangladesh Gayan-O-Srijonshil Prokashak Samity in the said writ petition although they have challenged the licence granted in favour of the added respondent No.17-petitioner and obtained an order of stay in its absence.

The added respondent No.17-petitioner filed an application for being added as the respondent No.17 in the writ petition and the

High Court Division allowed the said application and added the petitioner as respondent No.17 in the said writ petition.

The added respondent No.17-petitioner contested the said writ petition by filing affidavit-in-opposition stating, amongst others that, after meeting all the legal requirements, 26 (twenty six) members of this added respondent No.17-petitioner's Association obtained Trade Organizations Licence No.34 of 2002, dated 17.11.2002 from the office of the Director, Trade Organizations, Ministry of Commerce and formed a Trade Organization under the name and style বাংলাদেশ জ্ঞান ও সৃজনশীল প্রকাশক সমিতি (Bangladesh Gayan-O-Srijonshil Prokashak Samity). Thereafter, the added respondent No.17-petitioner's Association was registered under

section 28 of the Companies Act, 1994 bearing Registration No.C-531(44)/2002, dated 27th November, 2002. At last, the added respondent No.17-petitioner's Association has become the member of the Federation of Bangladesh Chamber of Commerce and Industry (FBCCI) as 'A' Class Association under Memo No.এফবিসিসিআই/এলএম/৭৪-অধিভুক্তি/২০০২/২৫৯১, তারিখঃ নভেম্বর ২৮, ২০০২ ইং।

Before being formed into a registered Trade Organization, the added respondent No.17-petitioner as Bangladesh Publisher Council/বাংলাদেশ সৃজনশীল প্রকাশক পরিষদ participated in the National and International Book Fair, meetings, conferences and seminars including Kalkata Book Fair, Agartola Book Fair, Delhi Book Fair and Dhaka Book Fair along with the writ petitioner No.1 and on those occasions writ petitioner

No.1 gladly admitted the added respondent No.17 -petitioner as an Association of publishers of creative literature. News in this regard was published in the "Daily Janakantha" on 23.01.2001, 24.02.2001, and 12.01.2003.

The Ministry of Cultural Affairs of Government of the People's Republic of Bangladesh constituted an implementation committee for National Book Policy and President of this added respondent No.17 petitioner, Mr. Mafidul Haque was member of the said committee while the petitioner's Association was none.

Like last year, the added respondent No.17-petitioner was invited by Bangla Academy by its letter No.বিওবি-মেলা-৩২/২০০৩/১৬০৪/২০/বা/এ তারিখঃ ১৮-১২-২০০২ to attend the first meeting of the Amor

Ekushey Granthamela Parichalana Committee-2003 held on 21.12.2002. The writ petitioner on 14.12.2002 with a view to depriving the members of the added respondent No.17-petitioner's Association from participating in the book fair filed the writ petition.

This added respondent No.17-petitioner organized first SAARC Book Fair in Dhaka, Bangladesh in the month of September 2002 and message of felicitation in this regard was given by the Hon'ble President and Prime Minister of Bangladesh. Moreover, SAARC Book Development Council was formed and Bangladesh was elected as President of Book Development Council.

The Government has issued licence in favour of the respondent petitioner after

fulfilling formalities including taking opinion from the Joint Stock Companies and Firms, the Federation of Bangladesh Chamber of Commerce and Industry and the respondent No.17 - petitioner had been performing its functions, participated in various National and International Book fairs and, as such, issuance of licence in favour of the respondent No.17-petitioner-appellant herein is very much correct and lawful and no injustice was caused to the writ petitioner respondents.

The added respondent No.17-petitioner-appellant herein also filed supplementary affidavit-in-opposition stating, inter-alia, that as per Section 3(7) of the Trade Organizations Ordinance, 1961, its published notice in two National Dailies,

namely the Daily Sabuj Bangla on 24.06.1997 and the Daily Sonali Barta on 25.06.1997 and as per Rule 3(6) of the Trade Organizations Rules, 1994, the Federation of Bangladesh Chamber of Commerce and Industry by letter under Memo No.FBCCI/LM/BAM-43/02/346 dated 16.03.2002 gave opinion to the Director, Trade Organizations in the following language:

"উপরোক্ত বিষয়ে আপনার মন্ত্রণালয়ের ০৯/০৯/১৯৯৭ ইং তারিখের পত্র নং-বাম/অবা-২/এ-১২/৯৭/২৫৩ এর সূত্রে জানানো যাচ্ছে যে, প্রস্তাবিত 'বাংলাদেশ সৃজনশীল প্রকাশক পরিষদ' সম্পর্কে ফেডারেশন পর্যালোচনা করেছে। পর্যালোচনান্তে প্রস্তাবিত সমিতি ২৪/১০/২০০১ ইং তারিখের আবেদন (সংযুক্ত) ও মন্ত্রণালয়ের ০৯/০৭/১৯৯৭ ইং তারিখের পত্রদ্বয় বিবেচনা করে এফবিসিসিআই থেকে প্রেরিত ০৪/০৯/১৯৯৭ ইং তারিখের পত্র নং-এফবিসিসিআই/৪৩-বাম/৯৯৮ প্রত্যাহারপূর্বক প্রস্তাবিত 'বাংলাদেশ সৃজনশীল প্রকাশক পরিষদ' এর নাম পরিবর্তন করে

বাংলাদেশ ‘সৃজনশীল প্রকাশক সমিতি’ নামে টি, ও লাইসেন্স প্রদানে
এফবিসিসিআই সমর্থন করেছে।”

The writ petitioner Nos.1 and 2 without complying with the provision of Sections 12 and 15 of the Trade Organizations Ordinance, 1961 filed the instant writ petition and the writ petition being not maintainable, the Rule is liable to be discharged and order of stay need be vacated.

During pendency of the said writ petition in the High Court Division, the dispute between the writ petitioners-respondent Nos.1 and 2 and the added respondent No.17-petitioner-appellant herein was solved and compromised and the writ petitioners-respondent Nos.1 and 2 agreed to withdraw the said writ petition but did not proceed further with the process of compromise.

Therefore, the writ petitioners finding no other alternative efficacious remedy moved the above mentioned writ petition before the High Court Division and obtained the Rule Nisi.

The added respondent No.17 contested the Rule Nisi by filing supplementary affidavit-in-opposition.

A Division Bench of the High Court Division upon hearing the parties made the Rule Nisi absolute by the impugned judgment and order dated 20.03.2006.

Feeling aggrieved by the impugned judgment and order dated 20.03.2006 of the High Court Division, the added respondent No.17-petitioner herein preferred the Civil Petition for Leave to Appeal No.1347 of 2006 before this Division and obtained leave, which, gave rise to the instant appeal.

Mr. Sk. Md. Morshed, the learned Senior Counsel appearing on behalf of the appellant submits that the High Court Division failed to take into consideration that the writ petitioner-respondent No.1, Bangladesh Publisher and Book Seller Association is an Association of Books Publishers and Sellers and persons engaged in the business of books but on the other hand, the added respondent No.17-appellant-Bangladesh Gayan-O-Srijonshil Prokashak Samity is an Association of publishers of Academic and Creative Literatures and thereby it is apparent that the basic object and purpose of the two Associations are being not similar and identical to each other, granting of licence in favour of added respondent No.17-appellant, Bangladesh Gayan-O-

Srijonshil Prokashak Samity is not violative of Section 3(2)(d) of the Trade Organization Ordinance, 1961 and the same is legal, correct and with lawful authority but the High Court Division committed serious illegality in making the Rule Nisi absolute and, as such, the impugned judgment and order passed by the High Court Division is liable to be set aside. He further submits that the High Court Division failed to take into consideration that the provisions of Section 3(7) of the Trade Organizations Ordinance, 1961 and Rule 3(2) of the Trade Organizations Rules, 1994 were never violated before obtaining the impugned licence because of the fact that public notice for formation of the respondent No.17-appellant's Association has been duly published in 2(two)

National Dailies, namely, "Daily Sabuj Bangla" on 26.06.1997 and "Daily Sonali Barta" on 25.06.1997 as is evident from Annexures-8 and 8/1 to the supplementary affidavit-in-opposition and from the said public notices it is clear that General Meeting was called for the purpose and object of "প্রকাশনার উন্নতিও প্রসারের লক্ষ্যে বাংলাদেশ সৃজনশীল প্রকাশক পরিষদ এর সাধারণ সভা আগামী ২৫-০৯-৯৭ ইং তারিখ বিকেল ৪ ঘটিকায় ৫১ পুরানা পল্টন ঢাকায় অনুষ্ঠিত হইবে। সভায় যথা সময়ে উপস্থিত থাকার জন্য সকলকে অনুরোধ জানানো যাচ্ছে।" He finally submits that the High Court Division committed error of law in holding that "This Court is very much competent to compare and scrutinize the purposes and objects contained in the Memorandum and Articles of Association of both the parties" although the same is highly disputed and may only be resolved in Arbitration/Appeal case as

per Section 12/15 of the Trade Organizations Ordinance, 1961 and not in the writ jurisdiction but the High Court Division committed serious illegality in making the Rule Nisi absolute and, as such, the impugned judgment and order passed by the High Court Division is liable to be set aside.

Per contra, Mr. Fida M. Kamal, the learned Senior Counsel appearing on behalf of the respondent Nos.1 and 2 made submissions in support of the impugned judgment and order of the High Court Division. He submits that the High Court Division upon consideration of the submissions made the Rule Nisi absolute on behalf of the writ petitioners as respondent Nos.1 and 2 herein held that before formation of a Trade Organization, the Promoters or

Organizers thereof have mandatory requirement to publish notice in at least two national daily newspapers stating their intention to form the trade organization on all Bangladesh basis and the aims and object thereof and Rule 3(2) reiterates the provisions of section 3(7) of the Ordinance that the persons interested in the subject matter should be able to attend the concerned meeting and to lodge their complaint or convey their opinion to the Director within 15 days from the date of publication of the notice and Rule 3(7) provides that the Director is entitled to collect any information or document from the promoters and also to consider objection and advice, if any, under Rule 3(2) before making any decision for granting licence which has not been complied

with by the added respondent No.17-appellant for obtaining licence. He further submits that the High Court Division rightly held that the publication of a notice under section 3(7) read with Rule 3(2) of the Rules is a mandatory requirements of law as per section 3(7) read with Rule 3(2) as the purpose and objects of the writ respondent No.17 is more or less similar to the purpose and objects of the writ petitioners and the impugned order in favour of the added writ respondent No.17-appellant has been issued in violation of the aforesaid provisions of law and hence, the impugned order has been declared to have been passed without lawful authority. He finally submits that the High Court Division rightly held that "This Court is very much competent to compare and

scrutinize the purposes and objects contained in the Memorandum and Articles of Association of Both the parties" and the objects and purposes of the two Associations are not disputed and hence, Section 12/15 of the Trade Organizations Ordinance, 1961 are not attracted in this case and, hence, the High Court Division made the Rule Nisi absolute and rightly passed the impugned judgment and order and the instant appeal may kindly be dismissed.

We have heard the learned Senior Counsels for the respective parties. Perused the impugned judgment of the High Court Division and other connected materials on record.

Leave was granted to consider the following submissions of the learned Senior Advocate for the appellant that the High Court

Division failed to take into consideration that the writ petitioner-respondent No.1, Bangladesh Publisher and Book Seller Association is an Association of book publishers, sellers and persons engaged in the business of books but on the other hand, the appellant Bangladesh Gayan-0-Srijonshil prokashak Samity is an Association of publishers of Academic and Creative Literatures and thereby it is apparent that the basic object and purpose of the two Associations are being not similar and identical to each other. As such, the granting of licence in favour of added respondent no. 17-appellant is not violative of Section 3(2)(d) of the Trade Organizations Ordinance, 1961 and is legal, correct and with lawful authority and as such the judgment and order

passed by the High Court Division is liable to be set aside.

The High Court Division failed to take into consideration that the provisions of Section 3(7) of the Trade Organizations Ordinance 1961 and Rule 3(2) of the Trade Organizations Rules 1994 were never violated before obtaining the impugned licence because of the fact that public notice for formation of respondent No.17-appellant Association has been duly published in 2(two) National Dailies, namely, "Dainik Sabuj Bangla" on 26.06.1997 and "Dainik Sonali Barta" on 25.06.1997 as is evident from Annexure 8 and 8/1 to the Supplementary affidavit-in-opposition and from the said public notices it is clear that General Meeting was called for the purpose and

object of "প্রকাশনার উন্নতি ও প্রসারের লক্ষ্যে বাংলাদেশ সৃজনশীল প্রকাশক পরিষদ এর সাধারণ সভা আগামী ২৫-০৯-৯৭ ইং তারিখ বিকেল ৪ ঘটিকায় ৫১ পুরানা পল্টন ঢাকায় অনুষ্ঠিত হইবে। সভায় যথা সময়ে উপস্থিত থাকার জন্য সকলকে অনুরোধ জানানো যাচ্ছে।" and as such the judgment and order passed by the High Court Division is liable to be set aside. The High court Division committed error of law in holding that "This court is very much competent to compare and scrutinize the purposes and objects contained in the Memorandum and Articles of Association of both the parties" although the same is highly disputed and may only be resolved in Arbitration/Appeal case as per Section 12/15 of the Trade Organizations Ordinance, 1961 and not in the writ jurisdiction and as such the judgment and order passed by the High Court Division is liable to be set aside.

At this juncture, let us scrutinize whether these submissions are worthy of merit consideration.

Section 3(2) (d) of the Trade Organisations Ordinance, 1961 read with rule 3(2) of the Trade Organizations Rules 1994 states that no licence shall be granted for registration under the Act to a trade organisation unless it is an Association of trade or industry or of both, organised on all-Bangladesh basis, to represent specific trades or industries or both. Provided that a licence for registration of such an Association shall not be granted to more than one trade organisation.

On meticulous scrutiny of the Memorandum and Article of Association of both of the Association we found it crystal clear that

purposes and objects of both the organisation are quite identical. Hence, it could easily be inferred that if the impugned licence issued in favour of the respondent no. 17-appellant remains intact, then more than one such organisation will operate simultaneously, which is against the legal scheme of the very enabling laws itself. There are some procedural requirements on the part of the promoters of an intended trade organisation for obtaining licence as per Section 3(7) the Trade Organisations Ordinance, 1961 read with Rule 3(2) of the Trade Organizations Rules 1994.

Section 3(7) of the ordinance as follows:

"(7) No licence shall be granted to a trade organisation unless the promoters or organisers thereof have,

before its formation, by a notice published in-

(a) at least two national daily newspapers, in the case of a trade organisation intended to be formed on all-Bangladesh basis;

(b) a local or regional newspaper, in the case of any other trade organisation, declared their intention to form the trade organisation and the aims and objects thereof."

While Rule 3(2) of the Trade Organizations

Rules 1994 states as follows:

"(2) কোনো বাণিজ্য সংগঠনকে অধ্যাইনের অধীন নিবন্ধনের জন্য

কোনো লাইসেন্স মঞ্জুর করা হইবে না যদি না উহা -

(ক) (খ), (গ) ও (ঘ) দফায় উল্লিখিত সভা ও সমিতিসমূহের
প্রতিনিধিত্ব করার জন্য সমগ্র বাংলাদেশ-ভিত্তিক সংগঠিত কোনো
সওদাগরি ও শিল্প সভাসমূহের ফেডারেশন হয় :

তবে শর্ত থাকে যে, সওদাগরি ও শিল্প সভাসমূহের
ফেডারেশন হিসাবে নিবন্ধনের জন্য লাইসেন্স কোনো একাধিক
বাণিজ্য সংগঠনকে মঞ্জুর করা হইবে না;

(খ) সমগ্র বাংলাদেশ-ভিত্তিক সংগঠিত কোনো শিল্প সভা হয়ঃ

তবে শর্ত থাকে যে, অনুরূপ কোনো সভার নিবন্ধনের
জন্য লাইসেন্স একাধিক বাণিজ্য সংগঠনকে মঞ্জুর করা হইবে
না;

(গ) সুনির্দিষ্ট এলাকার, যেমন বিভাগ, জেলা, উপজেলা ও
পৌরসভার বাণিজ্য ও শিল্পসমূহের প্রতিনিধিত্ব করার জন্য
সংগঠিত কোনো সওদাগরি ও শিল্প সভা হয়ঃ

(ঘ) সুনির্দিষ্ট বাণিজ্য বা শিল্প উভয়ের প্রতিনিধিত্ব করার জন্য
সমগ্র বাংলাদেশ-ভিত্তিক সংগঠিত বাণিজ্য বা শিল্প বা উভয়ের
কোনো সমিতি হয়ঃ

তবে শর্ত থাকে যে, অনুরূপ কোনো সমিতির
নিবন্ধনের জন্য লাইসেন্স কোনো একাধিক বাণিজ্য
সংগঠনকে মঞ্জুর করা হইবে না;

(ঙ) যেখানে কোনো সওদাগরি ও শিল্প সভা নাই সেখানে বাণিজ্য
ও শিল্পসমূহের প্রতিনিধিত্ব করার জন্য সংগঠিত কোনো শহর
সমিতি হয়ঃ

তবে শর্ত থাকে যে, অনুরূপ শহর সমিতি যে জেলায়
উহা অবস্থিত সেই জেলার সওদাগরি ও শিল্প সভার সহিত
সম্বন্ধযুক্ত বা অধিভুক্ত হইবে;

(চ) সুনির্দিষ্ট এলাকার, যেমন বিভাগ, জেলা, উপজেলা ও
পৌরসভার সুনির্দিষ্ট বাণিজ্য বা শিল্প বা উভয়ের প্রতিনিধিত্ব করার
জন্য সংগঠিত কোনো গোষ্ঠী হয়ঃ

তবে শর্ত থাকে যে, কোনো সুনির্দিষ্ট এলাকায়
বাণিজ্য বা শিল্প বা উভয়ের প্রতিনিধিত্বকারী কোনো
একাধিক গোষ্ঠী থাকিবে না এবং যেখানে কোনো নিবন্ধিত
শহর সমিতি রহিয়াছে সেখানে কোনো গোষ্ঠীকেই লাইসেন্স
মঞ্জুর করা হইবে না।”

On perusal of the notices (Annexure 8 and 8/1) we find that these were not published in two national daily newspapers as mandatorily required. The concerned daily newspapers named as "Dainik Sabuj Bangla" and "Dainik Sonali Barta" are in no way national dailies, not only that from the contents of the notice published in those papers it appears that the notice was not published /circulated with a view to formation of a new organization as required by the law, rather, its contents exposed that there is already a organization and meeting of that committee would be held for transaction of the business of that committee. We are, therefore, of the view that notice was not in accordance with the provision of law as contemplate therein.

As the notices were not published in the national dailies as required by law, it was not possible for the writ petitioners-respondents to file objections duly. Here, it is evident that presence of an underground campaign to deceive the writ petitioners-respondents from resorting prescribed relieves. In this connection, presence of fraudulent collusion from the part of government officials with the present appellants could also be inferred. It is a settled principle that fraud vitiates everything. In this point reliance could be placed upon the ratio propounded in the cases Government of Bangladesh and Ors. Vs Sadeque Ahmed Nipu and Ors. and Qumrun Nessa Vs. Mrs. Mahfuza Begum and others reported in 26 BLC

(AD) (2021) 214 and 2016 36 BLD (AD) 1
respectively.

In the case of Mohammad Idrish Vs East
Pakistan Timber Merchants Group, Registrar of
Joint Stock Companies, East Pakistan reported
in 20 DLR SC (1968)355 it was held that

"For the same reason we are also of
the view that section 12 of the Trade
Organizations Ordinance, 1961, cannot
take away the jurisdiction of the High
Court under Article 98 so far as the
correction of the acts of the
Registrar of Joint Stock Companies is
concerned. It only provides a separate
method for the resolving of the
internal disputes of such
organizations."

In the case of Kartic Das Gupta Vs Election Commission of Bangladesh and others reported in 8 ADC (AD) 578, it has been held that before going into the merit of a Writ Petition, the first and primary duty of the court is to see whether the Writ Petition itself is maintainable in law or whether the writ-petitioner has got any interest in the subject matter which, if not protected, shall cause him to suffer injury.

With these 'ratio's in view, we find that High Court Division vividly discussed the maintainability issue of the writ petition itself. And it was held that the writ petition is maintainable as because the provision of appeal under section 15 of the Ordinance is not applicable and the appeal is not an equally

efficacious/alternative remedy for the petitioner as government itself issued the impugned licence under Section 3 (2) (d) read with rule 3(8). Accordingly we approve the High Court Division's rhetoric in this regard that an appeal against the issuance of the impugned licence tantamount to an appeal against the Caesar to the Caesar. As the writ petitioners are very much aggrieved by the decision passed by the government concurring with findings of the High Court Division as far as it concerns the maintainability we too opine that the writ petitioners are entitled to invoke their constitutional right under Article 102 of the constitution.

Section 3(7) of the Trade Organizations Ordinance, 1961 is as follows:

"No licence shall be granted to a trade organisation unless the promoters or organisers thereof have, before its formation, by a notice published in-

a) at least two national daily newspapers, in the case of a trade organisation intended to be formed on all-Bangladesh basis;

(b) a local or regional newspaper, in the case of any other trade organisation, declared their intention to form the trade organisation and the aims and objects thereof."

Except some written statements that the said daily newspapers named as "Dainik Sabuj Bangla" and "Dainik Sonali Barta" where

required prior notices were published as per section 3(7) of the Trade Organizations Ordinance, 1961; there submitted no grain of evidence/documents to prove that the dailies were National Daily Newspapers.

Section 3(8) of the Trade Organizations Ordinance, 1961 is as such:

"No trade organisation shall function or engage in any activities without first obtaining a licence under this Ordinance"

It was admitted in the page 6 of the paragraph 6(b) of the concise statement for the appellant that before being formed into a registered Trade Organization, the added respondent No. 17 - appellant as Bangladesh Publisher Council/Bangladesh Srijanshil

Prokashok Parishad participated in the National and International Book fairs, meetings, conferences and seminars including Kolkata Book Fair, Agartola Book Fair, Delhi Book Fair and Dhaka Book Fair along with the Writ Petitioner - respondent No. 1 and on those occasions Writ Petitioner - respondent No. 1 gladly admitted the added respondent No. 17-appellant as an Association of publishers of creative literature. News in this regard was published in the "Daily Janakantha" on 24.02.2001, 23.01.2001 and 12.01.2001, which is clear contravention of the law.

In addition, it was contended that in 1997 one of such attempts for procuring the impugned licence was made and Government asked for the opinion of the writ petitioner on 14.07.1997

through Memo. No. FBCCI/43-BAM/912 whereupon the writ petitioner association requested not to issue such licence and the matter was dropped there. This means that a formal objection was pending before the licensing authority at the time of issuing the impugned license. As per rule 3(7) of the Trade Organizations Rules 1994 any objection pending concerning license should be considered. The Rule is as such:

“(৭) লাইসেন্স প্রদানের বিষয় বিবেচনার জন্য ডাইরেক্টর উদ্যোক্তাগণের নিকট হইতে সংশ্লিষ্ট যে কোনো তথ্য বা কাগজপত্র তলব করিতে পারিবেন এবং উপ-বিধি (২) মোতাবেক কোনো আপত্তি বা পরামর্শ প্রেরিত হইয়া থাকিলে তাহা বিবেচনা করিবেন।”

However, it is not evident that that objection lodged by the present appellants-writ petitioners on 14.07.1997 through Memo. No.

FBCCI/43-BAM/912 was in any way considered prior to the issuance of the impugned license.

As the concerned notices were not published in any national daily newspapers recognized by persons of ordinary prudence and the aforesaid objection was not considered, these vitiated the whole process of licensing. Because, here licensing authority did not comply with the procedure established by law, did not act in accordance with the provisions of law, acted malafide and violated principles of natural justice. If it's so, then established principle of law is that even if there is a ouster/non-obstante clause in any law, yet court has ample jurisdiction to review judicially whether the authority followed established principle of law or not.

In the case of Bangladesh represented by the Secretary, Ministry of Justice and Parliamentary Affairs and Others vs. Md. Idrisur Rahman, Advocate and Others reported in 17 BLT(AD) 231 stating that-

"..... the principle of natural justice is to be observed in a proceeding affecting a person or property or other rights of parties concerned. Accordingly, the Court, thus, always adds rider to the observance of the principle of natural justice in the exercise of power under the Constitution and other concerned laws of the land ..."

In case of Rear Admiral AA Mustafa vs. Bangladesh, represented by the Secretary of

Ministry of Defense, Dhaka cited in 51 DLR(AD)

(1999) 146 this Division maintains that:

"As mala fide vitiates every exercise of power, a mala fide exercise of pleasure by the President under Article 134 of the Constitution can be brought within the purview of judicial review, if the other provisions of the Constitution are not a bar."

In the case of M.M. Ibrahim vs. Mizanul Haque Chowdhury and Ors. reported in 69 DLR(AD)

(2017) 192 Appellate Division observed that:

"From the statements made in the leave petition, it is clear that the impugned order was passed behind the back of the leave petitioner as it does not appear that the copy of the

application for modification was served upon him and/or he was given any chance of hearing before passing the impugned order. Therefore, we find substance in the submission of Mr. Kamal-ul-Alam that the impugned order was passed in complete violation of the principles of natural justice, i.e. without giving any chance of hearing to the petitioner and, as such, the impugned order cannot be sustained."

Accordingly, we find no merit in submissions of the learned Counsel of the appellant.

The reason elaborated above we find that the impugned judgment and order of the High

Court Division does not call for any
interference.

In the result, this Civil Appeal is
dismissed without any order as to cost.

J.

J.

J.

The 12th April, 2022
Hamid/B.R/*Words 4,608*