

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 2093 of 2021.

In the matter of:

An application under article 102 of the Constitution of the People's Republic of Bangladesh.

AND

In the matter of:

Delta Life Insurance Company Limited,
represented by its Chief Executive Officer, of
Delta Life Tower, Plot 37, Road 90, Gulshan-
2, Dhaka-1212 and others

... **Petitioners.**

-Versus-

Present:

Mr. Justice Md. Khasruzzaman

&

Mr. Justice Md. Mahmud Hassan Talukder

Bangladesh, represented by the Secretary,
Ministry of Finance, Banks and Financial
Institutions Division, Bangladesh Secretariat,
Segunbagicha, Ramna, Dhaka and others,

... **Respondents.**

Mr. Tanjib Ul Alam, with
Mr. Mustafizur Rahman Khan with
Mr. Abul Kalam Azad with
Ms. Karishma Jahan and
Ms. Sumaiya Ifrit Binte Ahmed, advocates,
...For the **petitioners.**

Mr. A.M. Aminuddin, Attorney General with
Mr. Mohammad Bakiruddin Bhuiyan, Advocate
For the **respondent No.1.**

Mr. S.M. Monir, with
Mr. Mohammad Hasan Mahmud Talukder,
Advocates,
For respondent Nos.2 & 3.

Mr. Maruf Islam Chowdhury, Advocate,
For respondent No.4.

Mr. A.K.M. Asiful Haque, Advocate,
For respondent No.5.

Mr. M.H. Rashid, Advocate,
For respondent Nos.6 & 7.

Mr. Md. Zafarullah Chowdhury, Advocate
For respondent No.8.

Judgment on: 06.01.2022.

MD.KHASRUZZAMAN, J.

On an application under article 102 of the Constitution, Rule Nisi has been issued in the following term:

“Let Rule Nisi was issued calling upon the respondents to show cause as to why the office order bearing Memo No. 53. 03. 0000.036. 01.034.21.145 dated 11.02.2021 (Annexure-A to the writ petition) stating that the Board of Directors of Delta Life Insurance Company Limited is suspended for a period of 4(four) months and as administrator appointed under section 95 of the Insurance Act, 2010 on the purported ground that the affairs of petitioner No.1 is being carried in a manner likely to be prejudicial to the interest of the holders of its insurance policies, should not be declared to have been issued without lawful authority and is of no legal effect.”

At the time of issuance of the aforesaid Rule Nisi, this Court also directed the parties to maintain status-quo in respect of the operation of the impugned office order bearing Memo No. 53. 03. 0000.036. 01.034.21.145 dated 11.02.2021 (Annexure-A to the writ petition).

Facts, necessary for disposal of the Rule Nisi, in short, are as follows:

That Delta Life Insurance Company Limited, hereinafter referred to as Delta Life, is a public limited company incorporated in 1986 under the Companies Act, 1913 and is engaged in the business of providing life insurance. It serves over 16 lac customers and is a major

employer in Bangladesh with more than 20,000 field force and employees. Delta Life offers financial protection of the country through a mix of traditional and innovative products such as individual and group life insurance policies, health insurance and gono grameen bima. It is stated in the writ petition that Delta Life, under the guidance of its Board of Directors, always maintains strict corporate governance and transparency and its statutory auditors are always top tier audit firms of Bangladesh. For instances the company was audited by S.F. Ahmed & Co., M.J. Abedin & Co. and Hoda Vasi Chowdhury & Co. in respect of financial years of 2013 to 2015, 2016 to 2018 and 2019 respectively.

It also undertakes regular audits as prescribed by the respondent No.2 from time to time. As per section 29 of the Insurance Act, 2010, respondent No.2 decided to audit the management expenses and related matters along with authentication/justification of business operation of all life insurers in Bangladesh. Accordingly, M/s. Howlader Yunus & Co. was appointed as special auditors to perform the special audit for the years of 2015, 2016 & 2017 of the petitioner company on 12.02.2019 and the said audit firm after conclusion of the audit submitted a report to the respondent No.2 on 08.08.2019 (Annexures-B and B-1 respectively to the writ petition). But, without exhausting steps to be taken under section 51 of the Insurance Act, 2010 following the aforesaid special audit, respondent No.2 being instigated by the incumbent Chairman (respondent No.3), appointed another audit firm namely, M/s. Fames & R vide letter bearing

reference No. 53. 03. 0000. 71. 27. 019. 19. 154 dated 06.10.2019, to carry out investigation under section 48 of the Insurance Act, 2010(Annexure-C to the writ petition) for the years of 2015 to 2018. As per section 48(3) of the Insurance Act, 2010 the Investigator is required to submit report on investigation within 07(seven) working days but M/s. Fames and R submitted a vague report on 14.01.2021 after a prolonged period of one year and three months with some general observations out of terms of reference. It is stated that from the commencement of the tenure of the respondent No.3 as a Member of IDRA and after he was made as the Chairman of respondent No.2, Delta Life has been subjected to series of administrative and regulatory measures including delaying the grant of approval of extension of the tenure of the petitioner No.3 and subsequently rejecting the renewal of appointment application of the petitioner No.3 as CEO of Delta Life and delaying the grant of approval of actuarial basis and eventually revising actuarial basis proposed by the Actuary appointed by Delta Life and imposing penalties for non-compliance of various sections of the Insurance Act, 2010 with the sole purpose of personal gratification.

All the above actions and inactions were challenged by Delta Life in various writ petitions and obtained Rules Nisi which have been annexed as Annexures-D to D-4 to the writ petition. Meanwhile, on 13.11.2020 and 14.11.2020, the respondent No.3 contacted an Officer of Delta Life and demanded illegal gratification threatening that if his demands are not met Delta Life will be subjected to further fines and drastic action in respect of appointment of an Administrator will be

taken. It is stated that the illegal demands of the respondent No.3 was captured on tape record on 14.11.2020 by the Officer of Delta Life and a transcript thereof has been supplied to ACC for investigation and taking appropriate actions and further a complaint was lodged with the ACC. On the delay of ACC in commencing the investigation and in the face of continuous harassment by respondent No.3, Delta Life was constrained to file Writ Petition No. 1163 of 2021 and obtained Rule Nisi and direction upon the ACC to dispose of the application of Delta Life within a period of thirty days.

However, on the basis of the reports submitted by M/s. Howladar Yunus & Co and M/s. Fames & Co., on 18.01.2021 the respondent No. 2 issued notice vide Memo No. 53.03.0000.036.01.034.21.132 (Annexure-G to the writ petition) directing Delta Life to show cause within 07(Seven) days from the date of receipt of the letter as to why the Board of Directors of Delta Life should not be suspended for a period of 04(four) months and why an administrator shall not be appointed under section 95 of the Insurance Act, 2010. However, upon an application being filed by Delta Life for adjournments, the hearing of the show cause notice was shifted to 11.30 a.m. on 11.02.2021. It is stated that Delta Life challenging the show cause notice dated 18.01.2021(Annexure-G) had filed Writ Petition No. 1687 of 2021 and mentioned the same before the Court prior to commencement of the hearing on the show cause notice to appear on the next day for motion hearing and the Court was pleased to allow the prayer. Mr. Tanjib-Ul Alam with Mr. Mustafizur Rahman

Khan and Ms. Karishma Jahan, learned Advocates being authorized by Delta Life to represent them in the hearing of the show cause notice subsequently entered the zoom link provided by respondent No.2 at about 11.30 a.m. and they were allowed to join the meeting at about 11.37 a.m. and right after logging in, Mr. Tanjib Ul Alam, the learned Advocate informed the respondent Nos. 3 and 5 i.e. the Chairman and Member(Law) who were present at the zoom meeting to attend the hearing under section 95 that Writ Petition No. 1687 of 2021 has been mentioned before Court No.35(A) and the same will appear on 14.02.2021 for motion hearing and accordingly, sought for adjournment of the hearing of the show cause notice till hearing the writ petition by the said Bench of the High Court Division. Mr. Imtiaz Farooq, the learned Advocate for the respondent No.2 was also present as one of the participants in the zoom meeting. Respondent No.3 suddenly became agitated and started shouting stating that *'we will hear only the management of Delta Life and no lawyer should be allowed to speak'*. However, before the learned lawyers for Delta Life could say anything on the matter of hearing under section 95, the respondent No.3 disconnected the zoom link. Although the Board Members including the petitioner Nos. 2 and 5 and Mr. Saif Khondoker were waiting to log in the meeting and even though petitioner no.3 was present in the meeting but without providing any opportunity to the petitioner No.3, either to seek adjournment or to reply to the show cause notice, within approximately 5 minutes of commencement of the said meeting, respondent Nos. 2 and/or 3 abruptly ended the hearing

at 11.44 a.m. In the such circumstances, Delta Life served a hard copy of the reply to the show cause notice to the respondent No.2 and also submitted reply to show cause notice by e-mail dated 11.02.2021 at 1.34 p.m. (Annexure-H to the writ petition).

However, even before a reply was e-mailed and within less than an hour of disconnecting the zoom link, i.e. by 12.29 p.m., online newspaper Insurance Bd. reported that an administrator will be appointed in Delta Life identifying the respondent No.6 as the administrator. Ultimately at 3.18 pm. on 11.02.2021 Delta Life was served with the impugned order dated 11.02.2021 vide Annexure-A to the writ petition.

Subsequently, on further probe by senior Reporter of Samakal with Moinul Islam, Member(Admin) of IDRA over phone it was discovered that Mr. Moinul Islam was not aware of the issuance of the impugned order which was reported in Samakal on 12.02.2021. (Annexures- J and J-1 respectively to the writ petition) and as such the impugned decision passed by the respondent No.2 is coram non iudice and as such without any lawful authority and of no legal effect.

Under the aforesaid facts and circumstances, challenging the impugned order dated 11.02.2021 the petitioners filed the present writ petition and obtained Rule Nisi and status-quo in the manner as stated above on 15.02.2021.

Subsequently, upon an application being filed by the petitioners for staying operation of the impugned order, this Court by order dated

23.02.2021 modified the status-quo order dated 15.02.2021 into an order of injunction restraining the respondent No.6 from taking any official decision other than to perform routine work and business assigned in Annexure-A to the writ petition.

Challenging the aforesaid order dated 23.02.2021, the respondent Nos. 2 and 6 filed Civil Petitions for Leave to Appeal Nos. 714 of 2021 and 715 of 2021 before the Appellate Division and the aforesaid two civil petitions for leave to appeal were dismissed on 18.03.2021 with a direction upon this Bench to hear and dispose of the Rule Nisi expeditiously. Accordingly, this Bench has posted the Rule Nisi in the list for hearing.

During the pendency of the hearing of the Rule Nisi, the respondent No.2 has issued three orders all dated 09.06.2021 vide Memo No. 53.03.0000.036.01.034.21.182 extending the suspension of the Board of Directors of Delta Life for an indefinite period (Annexure-M to the application), vide Memo No. 53.03.0000.036.01.034.21.183 removing the respondent No.6 as the Administrator of Delta Life (Annexure-M-1 to the application) and vide Memo No. 53.03.0000.036.01.034.21.184 appointing Professor Md. Rafiqul Islam, Joint Secretary (Retd.) as the new Administrator of Delta Life (Annexure-M-2 to the application). As such, the petitioners filed an application for addition of party of Professor Md. Rafiqul Islam, Joint Secretary (Retired) as respondent No. 7 and also prayed for issuance of supplementary Rule Nisi in the writ petition, whereupon this Court on 15.09.2021 allowed the application upon adding the applicant as

respondent No.7 and issued supplementary Rule Nisi in the following term:

“Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Memo No. 53.03.0000.036.01.034.21.182 dated 09.06.2021 issued by the respondent No.2(Annexure-M to the application) extending the suspension of the Board of Directors of Delta Life Insurance Company Limited for an indefinite period and the Memo No. 53.03.0000.036.01.034.21.184 dated 09.06.2021 (Annexure-M-2 to the application) appointing the added respondent No.7 as Administrator should not be declared to have been issued without any lawful authority and are of no legal effect”

Subsequently, the added respondent No.7 resigned from the office of Administrator and as such the respondent No.2 issued Office Order vide Memo No. 53.03.0000.036.01.034.21.239 dated 13.10.2021 appointing Md. Quddus Khan, Secretary (Retd.) and Former Member, IDRA as the new Administrator of Delta Life. Thereafter, the petitioners filed another application praying for addition of Md. Quddus Khan, Secretary (Retd.) and Former Member, Insurance Development & Regulatory Authority, Administrator, Delta Life as respondent No.8 and also praying for a supplementary Rule Nisi to be issued on the office order bearing Memo dated 13.10.2021 (Annexure-R to the application) appointing the added respondent No.8 as the new Administrator of the Delta Life Insurance Company Limited.

On the other hand, the respondent Nos. 2 and 3 filed an application for discharging the Rule Nisi issued in the writ petition.

Two applications were taken up together for hearing and ultimately this Court by order dated 17.11.2021 allowed the application in part filed by the petitioners so far the addition of party is concerned adding the applicant as the respondent No.8 in the writ petition but rejected the application filed by the respondent Nos. 2 and 3 for discharging the Rule Nisi issued in the writ petition on the ground that hearing and disposal of the Rule Nisi on merit pursuant to the order of the Appellate Division will meet the ends of justice towards the parties instead of the application for discharging the Rule Nisi.

At the hearing of the Rule Nisi, the respondent No.1 has filed affidavit-in-opposition denying the material allegations brought against the respondent No.1 in the writ petition, contending, inter alia that the Government established the Insurance Development and Regulatory Authority (IDRA) under the provisions of Insurance Development and Regulatory Authority Act, 2010 for the supervision of the business of insurance industry and protection of the interest of the policy-holders and beneficiaries under the policy and systematic development and control of the insurance industry in the country as stipulated in section 15 of the Insurance Development and Regulatory Authority Act, 2010 and that since there were a numbers of audit objections as depicted from the audit reports of the two audit firms, the Insurance Development and Regulatory Authority (IDRA) by following the provision of section 95 of the Insurance Act, 2010 and

under compelling circumstances, only to save the interest of the policyholders of the Delta Life and to remove the illegality, corruption and mismanagement in the said company, issued the impugned order vide Memo dated 11.02.2021 (Annexure-A to the writ petition) appointing the respondent No.6 as the Administrator of the company and as such there being no illegality. Since the protection of the interest of the policyholders of the company being not ensured in the hands of the petitioners company, the authority rightly issued the impugned order and as such the Rule Nisi is liable to be discharged.

Respondent Nos. 2 and 3 filed affidavit-in-opposition and three supplementary affidavits-in-opposition to oppose the Rule Nisi upon denying all material allegations made in the writ petition.

It is contended by the respondent Nos. 2 and 3 that after the issuance of the impugned order dated 11.02.2021 by suspending the Board of Directors and appointing respondent No.6 as the Administrator of Delta Life, the petitioner No.4 is not the Chairman of the Board of Directors of the Company on the date of swearing the affidavit i.e. on 14.02.2021 and moreover there was no CEO in the office of Delta Life since 18.11.2020 and that the petitioner No.2 was not the Director of the Board of Directors and as such by practising fraud upon the Court and personating them as the Chairman and Directors of the Company filed the writ petition and obtained Rule Nisi. It is stated that M/s. Fames & R filed its investigation report finding 25 anomalies in the management of the Delta Life. As per audit reports submitted by M/s. Howlader Yunus & Co and M/s. Fames & R Co. on

14.07.2019 and 14.01.2021 (Annexures- 5 and 6 respectively to the affidavit in opposition) the respondents found that the petitioners were carrying on the business in a manner likely to be prejudicial to the interest of the policyholders and beneficiaries and as such the respondent Nos. 2 and 3, upon exhausting all legal formalities and to protect the interest of the policyholders, issued the impugned order dated 11.02.2021 suspending the Board of Directors and appointing the respondent No.6 as the Administrator of the petitioners company. It is also contended that the respondent No.3 is working as Chairman of IDRA with great reputation and he never demanded any gratification from anyone including said Abdul Awal and the allegation so made against the respondent No.3 is absolutely false and fabricated allegations. It is further stated that the petitioners took times one after another but without filing any reply to the show cause notice they filed several writ petitions and at last, the petitioners, without affording the opportunity to attend the zoom meeting, just after decision of passing the impugned order dated 11.02.2021 to suspend the Board of Directors and appoint an Administrator at about 12.00 a.m. on 11.02.2021 by a meeting of the authority of IDRA in presence of all the members of the authority under section 95 of the Insurance Act, 2010 they filed the so called reply through e-mail on 11.02.2021 at 1.34 p.m. It is also stated that the company cannot declare dividend in cash or in bonus without paying Tax and VAT to the government and as such it is the duty of the respondent Authority to took the matter into consideration and as such there is no malice or mala fide of the

respondent No.3 in passing the impugned order. Lastly, it is contended that Delta Life was given enough time to give reply to the show cause notice issued by the IDRA and invited for personal hearing but the management did not take that opportunity.

By filing first supplementary to the affidavit-in-opposition the respondent Nos. 2 and 3 stated that as per rule 18 of the Insurance Registration Probidhanmala-2013 some of the directors are not entitled to remain as Directors of the company and in an internal audit and inspection on the appointment of Directors of Delta Life it is found that there were four directors of the same family members violating the Rules and Regulations. It is further stated that an auditor firm namely ACNABIN has submitted a provisional interim report dated 30.11.2021 determining the financial corruption and evasion of Tax and VAT by the suspended Board of Directors of Delta Life. Another audit firm namely Aziz Halim Khair Chowdhury has also submitted the same report dated 25.10.2021 finding the financial corruption by the suspended Board of Directors of Delta Life. It is further stated that there was matured claim and death claim in three scheme (or Division) unpaid of TK.120,17,73,063.00 which was paid after the suspension of the Board of Directors on 11.02.2021.

By filing second supplementary to the affidavit-in-opposition the respondent Nos. 2 and 3 stated that after the appointment of the Administrator of Delta Life one Aziz Halim Khair Chowdhury was appointed for auditing the company under the direction given in the order dated 11.02.2021 issued by the respondent No.2 who concluded

investigation and submitted 06(Six) reports on different issues finding and detecting misappropriation of the company. It is further stated that the statements made in the writ petition that in the virtual platform, which was kept open for 14 minutes, the petitioner No.3 was present but the Authority has not given or allowed her to give reply to the said show cause notice is not correct and hence denied. It is contended that the petitioner No.3 did not utter a single word during those 14 minutes or she never prayed or wanted any time to give reply to the show cause notice in question and as such the impugned order was issued in accordance with law.

By filing third supplementary affidavit to the affidavit-in-opposition the respondent Nos. 2 and 3 stated that the impugned order was passed under section 95(1) of the Insurance Act, 2010 which is an administrative order of IDRA. Section 95(1) of the Insurance Act, 2010 does not provide any meeting of the Authority is required to be held for issuing any order under section 95(1) of the Act. As such the statements made in paragraph No.22 of the writ petition are not correct and denied. It is also stated that by letter dated 10.02.2021 of the IDRA vide Annexure-18(6) of the supplementary affidavit-in-opposition invited the management of Delta Life to be present in person or in zoom link on 11.02.2021 at 11.30 a.m. to make their reply if any but no one of the higher management of Delta Life uttered any word in zoom link or came to the office of respondent no.2 in person thus the IDRA was constrained to disconnect the zoom link to discuss themselves and after discussion they took decision at about

12.00 a.m. on 11.02.2021 because they all were acquainted with the facts and circumstances of the matter as in every decision, in show cause notice and allowing time for hearing were taken unanimously and as such there is no illegality in passing the impugned decision. IDRA did not receive any reply of the management of Delta Life to the said show cause notice before taking decision of the impugned order and subsequently the impugned order was communicated to the management of the Delta Life by the authorized Director of IDRA namely Mr. Md. Shah Alam, Director (Life).

Respondent No.4, Member (Law) of IDRA filed affidavit-in-opposition denying the material allegations made in the writ petition and contending inter alia that since by the impugned decision dated 11.02.2021 the posts of the petitioner Nos. 2, 4 and 5 as Shareholder and Policyholder, Chairman and Independent Director were ceased, filing of the writ petition by them as the Chairman and Directors of the Board of Directors of Delta Life is misleading and practising fraud upon the Court. It is stated that the IDRA had the reason to believe on the basis of the reports submitted by the M/s. Hawlader Yunus & Co. and M/S. Fames & R Co. that the petitioners were acting against the interest of the policyholders and as such, issued the show cause notice dated 18.01.2021 under section 95 of the Insurance Act, 2010 giving opportunity to the petitioner of being heard and after filing reply dated 10.02.2021 against the show cause notice dated 18.01.2021 (Annexure-H to the writ petition) and finding no satisfactory reply the respondent Nos. 2 and 3 suspended the Board of Directors of the

petitioners and appointed the administrator as is authorized under section 95 of the Insurance Act, 2010 and therefore there is no illegality committed by the respondents in passing the impugned order. It is further stated that the decision is not a *coram non judice* as the same was passed by the authority in accordance with law as required under section 13(4) of the IDRA Act, 2010 and as such the same is liable to be discharged.

Respondent No.5, Member (Admin) of IDRA has filed affidavit-in-opposition denying the material allegations made in the writ petition and contending inter alia that there is no illegality in the impugned decision which has been passed upon a meeting held on 11.02.2021 wherein he was present and all along he was at the zoom link and as such the statement made in paragraph no.22 of the writ petition in respect of absence of the respondent no.5 at the time of zoom link and passing the impugned order is not correct and hence the impugned decision is not passed by *coram-non-judice*. It is also stated that the writ petition is not maintainable because the petitioners have the alternative forum of review under section 32 of the Insurance Act, 2010. Rather regarding the presence of the respondent No.5 at the zoom link and passing the impugned decision is highly disputed question of fact which cannot be adjudicated under judicial review and as such the same is not maintainable and the Rule Nisi issued in the writ petition is liable to be discharged with cost.

Respondent No.8 filed affidavit-in-opposition denying all the material allegations made in the writ petition and contending inter alia

that the writ petition is not maintainable as the petitioners have alternative remedy as provided under the law. It is further stated that the order passed by the respondents under section 95 of the Insurance Act cannot be challenged in any Court as provided under section 102 of the said Act, rather the petitioners at best could file review under section 32 of the Insurance Development and Regulatory Authority Act, 2010.

By filing affidavits-in-reply to the affidavit-in-opposition filed by the respondent Nos. 2 and 3, the petitioner Nos. 2 to 5 have controverted the statements made in the affidavit-in-opposition and thereby stating inter alia that the special audit report of M/S. Hawlader Yunus & Co. does not contain any material to show or suggest that the business of the petitioner No.1 company is being carried on in any manner likely to be prejudicial to the interest of the policyholders and in view of the irregularities, Bangladesh Bank has removed M/s. Fames & R from the list of audit firms eligible for auditing banks and financial institutions. So, M/s. Fames & R is not entitled to audit the financial institution like the petitioner company and as such the impugned order is liable to be set aside and the Rule Nisi should be made absolute.

Mr. Tanjib-Ul Alam along with Mr. Mustafizur Rahman Khan, Mr. Abul Kalam Azad, Ms. Karishma Jahan and Ms. Sumaiya Ifrit Binte Ahmed, the learned Advocates appearing on behalf of the writ petitioners submit that the impugned order dated 11.02.2021 has been issued by the respondent No.2 at the instigation of respondent

No.3 in exercise of gross abuse of power with ulterior motive to harass the petitioner No.1, its Board of Directors and management of Delta Life and as such the same is liable to be set aside as being illegal and without lawful authority. It is submitted that to make an appointment of Administrator under section 95 of the Insurance Act, 2010, the Authority is required to have reason to believe that the insurer, in carrying on the insurance business, is acting in a manner likely to be prejudicial to the interest of the policyholders but, in the present case, the show cause notice dated 18.01.2021 has been issued on the basis of the reports of M/s. Hawlader Yunus & Co. and M/s. Fames & R do not identify the reasons basing upon which the Authority can believe that the company is carrying on its business in a manner likely to be prejudicial to the interest of the policyholders and in fact the reports of M/s. Hawlader Yunus & Co and M/s. Fames & R do not contain any allegations which can satisfy the requirements of section 95 of the Act and as such the observations of the reports do not call for appointment of the Administrator and hence the impugned order is a disproportionate sanction against the reports of the aforesaid two audit firms. In respect of the proportionality the relevant decision may be relied upon in the case of **Kazi Farooque Ahmed Vs. National University and others, 13 BLT(HCD) 181 and Jamaluddin Sikder and others Vs. Government and others, 21 BLC 162.**

Referring to section 95 of the Insurance Act, 2010 it is submitted that if the authority is satisfied that it has reasons to believe on the activities of the writ petitioners company which is likely to be

prejudicial to the interest of the policyholders then upon providing an opportunity of being heard to the petitioners, the authority could suspend the Board of Directors by appointing an Administrator. But, the authority did not do so before appointing the Administrator for the company and as such there is a breach of the provision of section 95 of the Insurance Act, 2010 on the part of the respondent authority and hence the impugned order is liable to be set aside. It is next submitted that pursuant to the show cause notice the petitioners and their legal representatives were present at the zoom link meeting commenced at 11.37 a.m. on 11.02.2021 and concluded at 11.44 a.m. without providing any opportunity of being heard to the petitioners or their legal representatives which has not been denied by the respondent Nos. 2 and 3 in their affidavit-in-opposition rather they have admitted in their affidavit in opposition that the impugned decision was taken at about 12.00 noon which indicates that the authority has taken the impugned decision with undue haste approximately within 16 minutes from the commencing of the hearing and conclusion of the same upon denying the petitioners from natural justice and rendering the reply and hearing thereon an empty formality.

They further submit that the respondents have stated that the writ petitioners were not given an opportunity to be heard on 11.02.2021 since the management of Delta Life did not appear rather their legal representatives were present. In this respect the writ petitioners in paragraph-18 of the writ petition have stated categorically that the petitioner No.3 was present and the legal

representatives of the petitioners were present but neither the petitioner No. 3 nor the legal representatives were allowed to make any reply to the show cause notice. Moreover, after logging in the zoom link as provided by respondent No.2, and before the legal representatives of the writ petitioners could say anything on the show cause notice, the respondent No.3, Chairman of IDRA became agitated and started shouting saying that *'no one other than the management of the Delta Life will be allowed to speak anything on the show cause notice'* which is violative of the principle of natural justice. Referring to the decision in the case of **Mitesh Manubhai Sheth Vs. Secretary, Government of India and others, AIR 1998 Guj 60**, the learned Advocates for the writ petitioners submit that the High Court of Gujarat of India referred to the case of **Board of Trustees, Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni Manu/SC/0184/1982 AIR SC 109** wherein the Apex Court observed that *in an inquiry before the domestic Tribunal, the delinquent officer is pitted against the legally trained man, if he seeks permission to appear through legal practitioner, refusing to grant his request would amount to denial of a reasonable request to defend himself and the principles of natural justice would be violated. In the said case, a charge sheet was drawn up as against an employee for alleged misconduct. Before the enquiry officer the employee submitted a request seeking permission to engage a legal practitioner for his defence which was turned down. In the said case the Court referred to the observations of Lord Denning in a leading case of **Pett Vs. Grayhound Racing Association Limited (1968) 2 ALL ER 545,***

549(CA) and held *“I should have thought, therefore, that when a man’s reputation or livelihood is at stake, he not only has a right to speak by his own mouth.. He has also a right to speak by counsel or solicitors.”*

Accordingly, the learned Advocates for the writ petitioners submit that the respondent authority by not allowing the legal representatives of the writ petitioners to place their reply to the show cause notice is a violation of the principle of natural justice which renders the action of the authority in passing the impugned order *ultra vires* and as such the same is liable to be set aside.

The learned Advocates for the writ petitioners further submit that since the respondent No.5, Member (Admin) of IDRA was not aware of the appointment of Administrator till later in the evening of 11.02.2021 much after the impugned order was issued and therefore the decision was not taken by the Authority as is required to be taken under section 13(4) of the Insurance Development and Regulatory Authority Act, 2010. Moreover, the impugned order does not contain any particulars of meeting held by the respondent No.2 in which the decision to pass the impugned order was taken. In respect of Annexure-8 to the affidavit-in-opposition of the respondent No. 2 and 3 the learned Advocates for the writ petitioners submit that the said Annexure-8 is the attendance sheet relating to the zoom meeting held between 11.44 a.m. and 12.00 noon on 11.02.2021 and if any meeting would have held for taking decision to pass the impugned order as claimed by the respondents then why the circulation of notice with agenda for the said meeting of the authority is supposed to have been

there and since there is no circulation of meeting with agenda it is clear that actually the respondent No.5 was not present at the time of holding meeting if any for appointment of Administrator by the Authority and as such the impugned order suffers from *coram non judice* and is liable to be set aside.

In respect of the second impugned order dated 09.06.2021 in the supplementary Rule Nisi, by which the added respondent No.7 was appointed as an Administrator of Delta Life, the learned Advocates for the writ petitioners submit that by passing the second impugned order dated 09.06.2021 the authority violated the provisions of section 95 of the Insurance Act, 2010 because no show cause notice or opportunity for hearing was provided to the petitioners nor there was any reason to pass the second impugned order dated 09.06.2021 appointing the added respondent No.7 as an Administrator of the company. As such the order dated 09.06.2021 impugned in the supplementary Rule Nisi is liable to be set aside. In support of the submission, the learned Advocates relied on the decisions in the cases of **Tarab Ali Vs. Bangladesh Textiles Mills Corporation, 9 BLD 383** and **Abul Kashem Sikder Vs. Government, 21 BLD 457**.

The learned Advocates for the writ petitioners also submit that the incumbent Chairman of IDRA i.e. respondent No.3 is a former employee of Delta Life being employed between 08.12.1998 to 31.08.2001 and again from 26.03.2003 to 24.10.2005 and since his taking over of the office of respondent No.2 as Chairman, Delta Life has been facing difficulties and obstacles in the course of

managements with IDRA on various scores with the sole purpose to extract personal gratification and settle personal score by the respondent No.3. They submit that by 08.02.2021 complaints alleging corruption and demand for illegal gratification against respondent No.3 were filed with the Anti-Corruption Commission and accordingly, in the reply dated 10.02.2021 to the show cause notice, the writ petitioners had sought that the respondent No.3 ought to have recused himself from the show cause hearing on the ground that the writ petitioners have so many allegations against the respondent No.3 who before taking over the office of the respondent no.2 was an employee of Delta Life being employed for the period mentioned above and also on the ground that no man should be a judge in their own cause which is one of the criterion of the principles of natural justice. But, being present in the hearing at the zoom meeting or at the meeting to take decision to pass the impugned order as claimed by the respondents, the respondent No.3 and the authority have violated the principles of natural justice which is nothing but mala fide and malice in law.

They further submit that the respondent No.3 has passed the impugned order with mala fide intention along with ulterior motive to harass the writ petitioners because the authority at the time of passing the impugned order based on the four grounds to make their satisfaction as required under section 95 of the Insurance Act as claimed by the respondents, but the show cause notice does not contain any of the grounds and as such without furnishing a copy of the show cause notice along with the grounds on which the impugned

order has been passed and without affording opportunity of heard on the said grounds, the same is violation of the principles of natural justice and as such they pray that the impugned order is liable to be set aside as the same has been passed with mala fide intention only to harass the writ petitioners and as such, the same be held that it is suffering from malice in law. In this regard, the learned Advocates for the writ petitioners relied on the decision in the case of **Dr. Nurul Islam Vs. Bangladesh, 33 DLR(AD) 201.**

Accordingly, the learned Advocates for the writ petitioners concluded their submissions by stating that since the impugned order being passed by the authority with a mala fide intention suffers from malice in law and violation of the principles of natural justice which is clear from the impugned order itself which has been passed basing on the reports of M/s. Hawlader Yunus & Co. and M/s. Fames & R without justifying the requirements of section 95 of the Insurance Act, and thus the Rule Nisi is liable to be absolute and the impugned order is liable to be set aside.

Mr. A.M. Aminuddin, the learned Attorney General, appearing on behalf of the respondent No.1, by referring to the impugned order vide Annexure-A to the writ petition, submits that on the basis of the audit and investigation reports submitted by M/s. Hawlader Yunus & Co. and M/s. Fames & R the authority had the reason to believe that Delta Life is carrying on its insurance business in a manner likely to be prejudicial to the interest of the policyholders and as such the writ petitioners were issued with show cause notice dated 18.01.2021 to

give reply within 07(seven) working days as to why the Board of Directors of Delta Life should not be suspended appointing an Administrator. The learned Attorney General further submits that in the show cause notice the writ petitioners were provided opportunity to give reply to show cause through postal service or by e-mail within 31.01.2021 at 11.30 a.m. or to attend at the zoom link or to appear in person before the office of authority on the specified date and time to give reply to the show cause notice, but they did not do the same rather they have taken times one after another and lastly on their prayer the Authority fixed on 11.02.2021 at 11.30 a.m. but the management of Delta Life did not give the reply to the show cause notice. Referring to the impugned order of the writ petition, Mr. A.M. Aminuddin, the learned Attorney General, also submits that the Chairman, Members and Management Authority were present on 11.02.2021 and they were requested to place their statements but without giving any reply/statements against the show cause notice they simply inform the Authority that they would file the writ petition through the lawyers before the High Court Division and from this it can be presumed that they have accepted the allegations so made against the writ petitioners and if they had anything to say or rebut the allegations so made by the respondents with specification, they ought to have appeared before the authority to give reply and since they have nothing to say against the allegations they are entitled to file the writ petition. Now if the writ petitioners deny the allegations made against them then the same becomes a disputed question of fact

challenging which the present writ petition is not maintainable. Referring to the provision of section 95 of the Insurance Act and the impugned order he contends that the impugned order itself proves that the authority had some reasons to believe that the petitioners were carrying on their business in a manner likely to be prejudicial to the interest of the policyholders. On the question of mala fide the learned Attorney General further contends that there is no question of mala fide since the writ petitioners did not raise any question against the reports. He also contends that the writ petitioner did not pay the VAT and Tax payable at source which is fatal and against the interest of the policyholders. Referring to the findings of the reports of M/s. Hawlader Yunus & Co., the learned Attorney General submits that the writ petitioners under the circular of IDRA is obligated to pay the commission, salary and allowance and other incentives through account payee cheque but without do so, they have paid the same in cash which is in violation of the circular of the authority and as such the authority has apprehension that the petitioners are acting against the interest of the policyholders. He then submits that the impugned order has been passed for the purpose of finding out the truth and complete the audit of the company. By making the aforesaid submissions the learned Advocate for the respondent No.1 prays that there is no illegality in passing the impugned order and as such the Rule is liable to be discharged. Mr. Bakiruddin Bhuiyan the learned Advocate on the other day has submitted that the writ petitioners had the alternative remedy provided under section 32 of the Insurance

Development and Regulatory Authority Act, 2010 which being not exhausted the writ petition is not maintainable. In this respect he relied on the decision in the case of **Dhaka Warehouse Limited and another Vs. Assistant Collector of Customs and others, 11 BLD(AD)327.**

Mr. S.M. Monir along with Mr. Mohammad Hassan Mahmud Talukder, the learned Advocates appearing on behalf of the respondent Nos. 2 and 3 by referring to the impugned order dated 11.02.2021 vide Annexure-A to the writ petition submits that nowhere in the writ petition the petitioners have stated or annexed the order dated 04.04.2020 which is a part and parcel of the impugned order and then he refers to the provisions of sections 28, 29 to 48 of the Insurance Act, 2010 and submits that the IDRA has the power to audit any insurance company under the aforesaid provisions of law and conducted special audit by two audit firms namely M/s. Hawlader Yunus & Co. and M/s. Fames & R and pursuant to the reports of the aforesaid two firms the authority issued show cause notice dated 18.01.2021 under section 95 of the Insurance Act, 2010 as to why the Board of Directors of Delta Life should not be suspended and as to why an Administrator should not be appointed. But the management of Delta Life did not come to the authority to file any reply and nowhere in the writ petition it has been stated that the management of the company appeared to the authority and prayed for time to submit personal hearing. Referring to the provision of the Insurance Act, 2010 Mr. S.M. Monir further submits that there is no necessity of sending

the opinion at the time of appointing an Administrator rather mere belief of the authority is sufficient and before passing the impugned order the authority passed many orders giving opportunity to the petitioners to give their reply to the show cause notice but they did not do. Moreover, the petitioners did not co-operate the audit team at the time of auditing the petitioners company although the petitioners ought to have the responsibility of giving cooperation to the audit team. He also submits that the impugned order which has been passed under section 95 is not a final order rather it is an ad interim order challenging which the writ petition cannot be maintainable. Referring to special audit he contends that after conducting special audit the authority found prima facie case against the petitioners for which the authority formed further audit team and as such there is no illegality. He further contends that the petitioners admitted that audit report in part which has led to the respondents to believe a prima facie case against the petitioners and accordingly, the authority passed the impugned order under section 95 of the Insurance Act and that being the temporary measure cannot be subjected under judicial review. He further contends that in audit corruption of more than 300 crore taka has been found by the audit team and the ultimate purpose of passing the impugned order is to audit by the firm as the authority believed that audit is necessary of the company. On the question of believe Mr. S.M. Monir the learned Advocate has relied on **16 MLR (AD)161** and also contends that the respondents have come to the believe in any way that the petitioners are acting prejudicial to the interest of the

policyholders then the respondent authority may appoint the Administrator under section 95 of the Insurance Act. Accordingly, he submits that all procedural laws have been exhausted before passing the impugned order appointing the Administrator in the petitioners company. Referring to Article 152 of the Constitution read with section 100 of the Insurance Act, 2010 he submits that order passed under section 95 cannot be challenged before any Court as it is not a final order. He further submits that the impugned decision is a policy matter of IDRA and as such, no Court should ordinary interfere with the policy decision unless the same is clearly illegal. In this regard, he has relied on the decision in the case of **Bangladesh Agricultural Development Corporation and others Vs. Md. Abdur Rashid and others, 67 DLR (AD)257**. Lastly, he submits that against the impugned order the petitioners at best could file review application under section 32 of the Insurance Development and Regulatory Authority Act, 2010 and without exhausting that forum they have filed the present writ petition which is not maintainable and as such the Rule Nisi is liable to be discharged.

Mr. Maruf Islam Chowdhury, the learned Advocate appearing on behalf of the respondent No.4 by adopting the submissions made on behalf of the respondent Nos. 1, 2 and 3, further submits that the Insurance Development and Regulatory Authority (IDRA) had the reason to believe on the basis of the audit and investigation reports of the two audit firms that the writ petitioners were carrying on their business in a manner likely to be prejudicial to the interest of the

policyholders and as such the authority passed the impugned order under section 95 of the Insurance Act, 2010 pursuant to the decision taken in a meeting held in presence of the members as required under section 13(4) of the IDRA Act, 2010 and as such there is no illegality committed on the part of the respondent authority and hence the Rule Nisi is liable to be discharged.

Mr. A.K.M. Asiful Haque, the learned Advocate appearing on behalf of the respondent No.5 by adopting the same submissions as made by the learned Advocate for the respondent Nos. 1, 2 and 3, also submits that the statements made in paragraph No.20 of the writ petition about the presence of the respondent no.5 is not at all correct rather the respondent No.5 was all along present in the meeting held on 11.02.2021 and the decision was taken by the respondent No.2 unanimously in presence of the respondent Nos. 3, 4 and 5 and as such there is no question to be arisen in respect of *coram non judice*. He concluded his submissions stating that the impugned order is not palpably illegal nor it shows clear malice in law or not mala fide, rather the impugned order dated 11.02.2021 was passed legally by the authority under section 95 of the Insurance Act, 2010 and as such the Rule Nisi is liable to be discharged.

Mr. M.H. Rashid, the learned Advocate appearing on behalf of the respondent Nos. 6 and 7 by adopting the submissions advanced by the learned Advocates for the respondent Nos. 1, 2 and 3 submits that the respondent authority did not commit any illegality in passing the impugned order and as such the Rule Nisi is liable to be discharged.

Mr. Zaforullah Chowdhury, the learned Advocate appearing on behalf of the respondent No.8, by adopting the submissions of the learned Advocate for the respondent Nos. 1, 2 and 3, further submits that the respondent authority upon full compliance of the provisions of section 95 of the Insurance Act, 2010 passed the impugned order. But the writ petitioners are filing writ petitions one after another to frustrate the purpose of the respondents to protect the interest of the policyholders from the illegal act of the writ petitioners company which is prejudicial to the interest of the policyholders and as such he has prayed for discharging the Rule Nisi with cost.

Heard the learned Advocates appearing on behalf of their respective parties and on perusal of the writ petition, supplementary affidavits thereof, affidavits-in-opposition, supplementary affidavits-in-opposition filed by the learned Advocates on behalf of their respective parties and all annexures annexed thereto.

It appears from the impugned order that for the purpose of ascertaining as to whether the interests of the policyholders is being protected by the writ petitioners company, on 12.02.2019 the respondent No.2 appointed an audit firm namely-M/s. Hawlader Yunus & Co. to conduct special audit in respect of management expenses of Delta Life Insurance Company Limited, who after conclusion of audit, submitted its special audit report on 14.07.2019 raising some objections against Delta Life. Thereafter, on 06.10.2019 the respondent No.2 appointed another audit firm namely M/s. Fames & R under section 48(1) of the IDRA Act, 2010 to investigate the audit

of the writ petitioners company and this firm submitted its investigation report long after on 14.01.2021.

It further appears that on the basis of the said two reports the respondent No.2 issued show cause notice dated 18.01.2021 vide Annexure-G to the writ petition upon Delta Life requesting to submit reply within 07(seven) working days as to why the Board of Directors of Delta Life should not be suspended appointing an Administrator in Delta Life under section 95 of the Insurance Act, 2010. By the said show cause notice the writ petitioners were also requested to send reply to show cause by e-mail or by post within 31.01.2021 at 11.30 a.m. or to give statement joining at the meeting using zoom link on the date and time as mentioned above or to appear in person before the office of the authority to give reply.

However, pursuant to the show cause notice Delta Life filed application seeking adjournment and as such the hearing of the show cause notice was shifted on 11.02.2021 at 11.30 a.m..

Ultimately, the respondent No.2 has passed the impugned order suspending the Board of Directors of Delta Life and appointing an Administrator of Delta Life to manage the affairs of the company in accordance with law vide Annexure-A to the writ petition.

The learned Advocates for the writ respondents in a body submit that to ascertain as to whether the company is protecting the interest of the policyholders in carrying on their insurance business, the authority conducted audit by the audit firms as mentioned above and

on the basis of the reports of the auditors, the authority has come to believe with apprehension that the petitioners are carrying their business against the interest of the policyholders and as such, upon exhausting all formalities the authority has passed the impugned order which is in full compliance of the provision of section 95 of the Insurance Act, 2010.

The petitioners stated in the writ petition that pursuant to the show cause notice dated 18.01.2021 the writ petitioners and the legal representatives of the petitioners attended at the zoom meeting on 11.02.2021 which commenced at 11.37 a.m. but before they could say anything on the show cause notice the respondent No.3 disconnected the zoom link at 11.44 a.m. and ultimately within a very short time the respondent No.2 passed the impugned order dated 11.02.2021 with undue haste.

From the facts and circumstances of the case and from the submissions as advanced by the learned Advocates on both the sides, it appears that the points as raised in this Rule Nisi to determine by this Bench are that whether the impugned order dated 11.02.2021 is in compliance of the provision of section 95 of the Insurance Act and whether the principle of natural justice as is required to be followed before passing any order under section 95 of the Insurance Act, 2010 or it has been violated and also whether the impugned order suffers from *coram non judice* and also whether the writ petitioners had the forum of review under section 32 of IDRA Act, 2010 and also whether the impugned decision is the result of mala fide and malice in law.

In this respect, first of all we are to see the provision of section 95(1) of the Insurance Act, 2010, which reads as follows:

“95. Appointment of Administrator for management of insurance business. (1) If at any time the Authority has reason to believe that an insurer carrying on insurance business is acting in a manner likely to be prejudicial to the interest of holders of insurance policies or failing to fulfill the solvency margin requirements, in this case, it may after giving opportunity to the insurer to be heard, suspend the Board of Directors and appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.”

On reading the aforesaid provision of law, it appears that the provision of section 95 of the Insurance Act has two pre-conditions that before suspending the Board of Directors and appointing an Administrator to manage the affairs of the company, the authority has to have reasons to believe that an insurer carrying on insurance business is acting in a manner likely to be prejudicial to the interest of policyholders or failing to fulfill the margin requirements and if that be so, then the authority must give opportunity to the insurer to be heard.

In the instant case, on perusal of the impugned order it appears that the authority has stated four grounds in the impugned order to prove that it had apprehension that the writ petitioners were acting against the interests of the policyholders and thereby tried to show

that the interests of the policyholders are not protected in the hands of the writ petitioners. But on perusal of the grounds of the impugned order and the facts and circumstances of the case we do not find any such reason or materials on the same to come to the believe that the writ petitioners are carrying on their insurance business in a manner likely to be prejudicial to the interest of the policyholders.

It is to be mentioned that in respect of ground No.1 i.e. failure of the writ petitioners company to make payment of Tax payable at source, the learned Advocate for the writ petitioners submits that the authority i.e. IDRA has got no authority under the law to give direction or to take steps in respect of realization of the VAT and Tax rather if there is any failure on the same on the part of the writ petitioners then another authority is there under the Income Tax Ordinance, 1984. In respect of the power of the Authority on the point of VAT, Mr. Tanjib-Ul Alam, the learned Advocate for the writ petitioners by producing a photocopy of the certified copy of the judgment and order dated 18.11.2021 passed in Writ Petition No. 6035 of 2021 submits that the High Court Division in the said judgment made the Rule Nisi absolute holding that Authority has got no such power to realize or direct the company to pay VAT payable at source and as such the learned Advocate submits that the Authority has no jurisdiction to take the aforesaid point into consideration as a ground for passing the impugned order and as such the impugned order is liable to be set aside.

Moreover, on the perusal of the impugned order along with the show cause notice basing which the impugned order has been passed it appears that the impugned order contains four reasons, although the same do not attract the requirement of section 95, but the show cause notice following which the impugned order has been passed does not contain any of such reasons.

The learned Advocates for the writ petitioners submit that where a statute requires reason to be given and failure to give reason in the show cause notice will render the decision liable to be set aside and fair justice demands procedural safeguards as enunciated in law. In the present case, section 95 of the Act requires opportunity of hearing is to be given before passing the impugned order but without giving that opportunity the respondent No.2 has passed the impugned order which is liable to be set aside as submitted by the learned Advocates for the writ petitioners. In this respect, the settled principles for fair procedure are that before taking any action against a man the authority should give him notice of the case and afford him fair opportunity to answer the case against him and to put his own case. This view finds support in the case of **SK. Ali Ahmed Vs. Secretary, Ministry of Home Affairs, 40 DLR (AD) 170**, wherein it has been held as follows:

“As to the question whether the appellant was entitled to a show cause notice/hearing before the decision to cancel his license was taken the High Court Division took the view that there is no such requirement under the Arms Act nor can such a requirement be

*imported into the statute because of the sensitive nature of the subject matter. This view seems to find support from some decisions in the Indian Jurisdiction (**vide AIR 1956 Calcutta 96, AIR 1954 Rajasthan 264**). It must, however, be pointed out that there is a long line of decisions from the Pakistan Jurisdiction, (**The University of Dhaka Vs. Zakir Ahmed, PLD 1965 S.C.90=16 DLR (SC) 1722**) which have consistently taken the view that in all proceedings by whomsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting “the person or property or other right of the parties concerned”. This rule applies even though there may be no positive words in the statute or legal document whereby the power is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement of fairness.”*

It is also settled that the authority while issuing show cause notice must mention the grounds or part of the real grounds of the proposed action or mention one ground but action is taken on some other grounds in that case the notice suffers from vagueness. Again if one action is proposed in the notice and a different action is taken in the order, the principles of natural justice are violated. This view finds support in the case of **Bangladesh Telecom Ltd Vs. BTTB, 48 DLR (AD) 20**, wherein it has been held in paragraph No.31 as follows:

“We have held earlier that although the impugned letter of cancellation is in respect of the Agreement, it is in effect a

revocation of the licence. Mr. TH Khan insistently argued that it was cancellation of a commercial contract for which no show cause notice was necessary. The licence was not revoked, but it was rendered ineffective as a consequence of cancellation of the Agreement, he argues. Under section 8 of the Telegraph Act a licence can only be revoked, not made ineffective. The impugned letter of cancellation can only mean revocation of licence, nothing else. A licence is a privilege created in favour of the licensee and unless the statute excludes the operation of the principle of natural justice, a show cause notice is a must before revocation of the licence.”

In the said decision it has further been held in paragraph No. 32 as follows:

“It is not enough to issue a show cause notice. In order to be valid it must be a meaningful one. The High Court Division failed to read the notice, although it is apparent that it does not fulfill the requirements of a meaningful and therefore valid show cause notice. When it is agreed on all hands that without the PSTN connection the cellular radio telephone system is not operational yet, it is idle to talk about violation of clause 17. BTL’s transfer of its shares to Watership Ltd. is sub-judice and cannot be the basis of cancellation. Apart from these two allegations, no facts have been made out in the show cause notice to attract the violation of clauses 3, 6, 7, 9 and 23 of the Agreement. An attempt has been

*made by BTTB to furnish some facts in its affidavit-in-opposition and Mr. TH Khan has also verbally submitted some facts, but we are unable to entertain them, as the facts which constitute the valid basis of cancellation have to be alleged in the show cause notice itself and cannot be supplemented by fresh facts in affidavit. As Krishna Iyer, J aptly put in the case of **Mohinder Singh Vs. Chief Election Commissioner, AIR 1978(SC) 851**, “orders are not like old wine getting better on being older”.*

Further, procedural safeguards are essential elements of rule of law. The principles of natural justice are of two categories i.e. a man cannot be condemned unheard and a man cannot be the judge in his own cause.

As we have already found from the submissions made by the learned Advocates for the writ petitioners that the writ petitioners stated in the writ petition that there so many allegations against the incumbent Chairman of Insurance Development and Regulatory Authority (IDRA) i.e. respondent No.3 is a former employee of Delta Life being employed between 08.12.1998 to 31.08.2001 and again from 26.03.2003 to 24.10.2005 and since his taking over of the office of respondent No.2 as Chairman, Delta Life has been facing difficulties and obstacles in the course of managements with IDRA on various scores with the sole purpose to extract personal gratification and settle personal score by the respondent No.3 and that complaints alleging corruption and demand for illegal gratification against respondent No.3 were filed with the Anti-Corruption Commission and accordingly, in

the reply dated 10.02.2021 to the show cause notice (Annexure-H to the writ petition), the writ petitioners had sought that under the circumstances, Dr. M. Mosharraf Hossain FCA ought to have recused himself from the hearing to the show cause on the ground that the writ petitioners have so many allegations against the respondent No.3 who before taking over the office of the respondent no.2 was an employee of Delta Life being employed for the period mentioned above and also on the ground that no man should be a judge in their own cause which is one of the criterion of the principles of natural justice. But, without giving any heed to the same and rather being present in the hearing at the zoom meeting on 11.02.2021 or at the meeting to take decision to pass the impugned order as claimed by the petitioners, the respondent No.3 and the authority have violated the principles of natural justice which is nothing but mala fide and malice in law.

The authority could have considered the prayer on the ground that no man should be a judge in his own cause but without considering the same, the respondent No.3 all along present in the zoom meeting to attend the hearing to the show cause notice. This is nothing but mala fide and malice in law and also violation of the principle of natural justice.

The settled principle is that no man should be judge in his own case. With a view to strengthening public confidence, it was developed into a jurisdictional principle that no one having any interest or bias in respect of any matter is competent to take part in the decision making relating to that matter. It was said that it is of fundamental importance

that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

We have also found that the respondent No.3 has passed the impugned order with mala fide intention along with ulterior motive to harass the writ petitioners because the authority at the time of passing the impugned order based on the four grounds although the same do not fulfill the requirements as required under section 95 of the Insurance Act, but the show cause notice does not contain any of the grounds and as such without furnishing a copy of the show cause notice along with the grounds on which the impugned order has been passed and without affording opportunity of being heard on the said grounds, the same is violation of the principles of natural justice and as such the learned Advocate for the petitioners prays that the impugned order is liable to be set aside as the same has been passed with mala fide intention only to harass the writ petitioners and as such the same be hold that it is suffering from malice in law. In this regard, the learned Advocates for the writ petitioners relied on the decision in the case of **Dr. Nurul Islam Vs. Bangladesh (1981), 33 DLR (AD) 201.**

It is also the settled principle that notice and hearing are to be given before the decision is taken. There may be several stages before the decision is taken. Fairness demands an opportunity of hearing. What is the effect of failure to give a fair hearing and will a decision in breach of *audi alteram partem* be void or voidable? In this respect reliance can be made in the case of **Ridge Vs. Baldwin, in (1964) AC**

40 wherein the majority held that *the failure of fair hearing rendered the dismissal of the Chief Constable void*. In the case of **Orissa Vs. Binapani, 1967 SC 1269 and Shreeram Durga Prasad Vs. Settlement Commission, (1989) 1 SCC 628**, it has been observed that generally the Court held a decision in violation of *audi alteram partem* to be void and a nullity.

We are of the view that *audi alteram partem* is a part of the procedural due process guaranteed by article 31 of the Constitution and in all cases violation of its renders the decision void under article 31 of the Constitution.

On comparison of the show cause notice and the impugned order we do not find that the show cause notice contained any of such grounds basing upon which the impugned order has been passed. In this score also the principle of natural justice has been violated.

Moreover, *'the allegations made in paragraph-18 of the writ petition against the respondent No.3 that respondent No.3 disconnected the zoom link provided to the petitioners and he did not give the opportunity to say anything on the show cause notice passed the impugned order within approximately 5 minutes of commencement of the meeting ended hearing'* has not been denied by the respondent authority by affidavit-in opposition but subsequently it has been developed and as such it can easily be presumed that they have accepted the allegations made against respondent No. 2 and 3 which has been supported in the case of **Naseem Bano Vs. U.P., AIR 1993**

SC 2592 wherein it has been held that the statements made in the writ petition and allegations made against the respondent-authorities are deemed to have been admitted by the respondent authority and as such it can be said that principles of natural justice have been violated by the respondent authority which rendered the impugned decision void and a nullity.

Since the principles of natural justice as required under section 95 of the Insurance Act has been violated, we are of the view that the impugned order has been passed with mala fide intention and the same is malice in law for which the impugned order is required to be interfered with.

As such we are of the view that the authority did not comply with the requirement as prescribed in section 95 of the Insurance Act, 2010 before passing the impugned order.

In respect of whether the impugned decision suffers from *coram non judice*, we are of the view that since the respondent No.5 filed affidavit-in-opposition denying the claim of the writ petitioner that the respondent No. 5 was not present at the time of meeting and taking decision to pass the impugned order rather he stated that he was all along present in the zoom meeting and at the time of passing the impugned order and as such the same does not call for any discussion under the judicial review.

In respect of the question of maintainability of the writ petition as submitted by the learned Advocates for the respondents that the

writ petitioners could at best file a review application under section 32 of the Insurance Development and Regulatory Authority Act, 2010, we need to go through the provision of section 32 of the said Act which reads as follows:

“32. Review.(1) Any person or organization aggrieved by an order passed by the Chairman or any Member or any Officer under this Act may apply for review of that order within the time prescribed by regulation in prescribed form and subject to payment of prescribed fee, and the order of the Authority upon this review application shall be final.”

The law provides that review is to be filed against any order passed under the Insurance Development and Regulatory Authority Act, 2010 not the Insurance Act, 2010. In the present case, admittedly the impugned order has been passed by the Authority under section 95 of the Insurance Act, 2010 not under the IDRA Act, 2010 and as such question of filing review under section 32 of the IDRA Act does not arise at all. So the submissions made by the learned Advocates for the respondents on this score are not tenable in the eye of law.

In view of the reasons and discussions made above, we find force in the submissions of the learned Advocate for the writ petitioners and as such the Rule Nisi along with the supplementary Rule Nisi is liable to be made absolute.

In the result, the Rule Nisi and the supplementary Rule Nisi are made absolute and the office order bearing Memo No. 53. 03.

0000.036. 01.034.21.145 dated 11.02.2021 (Annexure-A to the writ petition) and the impugned Memo No. 53.03.0000.036.01.034.21.182 dated 09.06.2021 issued by the respondent No.2 (Annexure-M to the application) extending the suspension of the Board of Directors of Delta Life Insurance Company Limited for an indefinite period and the Memo No. 53. 03. 0000. 036. 01. 034. 21.184 dated 09.06.2021 (Annexure-M-2 to the application) appointing the added respondent No.7 as Administrator are declared to have been issued without lawful authority and of no legal effect.

The a-interim orders of status-quo and injunction granted earlier are hereby vacated.

There will be no order as to cost.

MD. MAHMUD HASSAN TALUKDER,J.

I agree.