

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

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

WRIT PETITION NO. 12189 OF 2023

IN THE MATTER OF:

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

A N D

IN THE MATTER OF:

M/S Alvi Spinning Mills Limited

...Petitioner

-Versus-

Government of Bangladesh and others

... Respondents

Mr. Md. Anowarul Islam Shaheen, Advocate

... For the Petitioner

Mr. Mia Mohammad Ishtiaque, Advocate

...For the Respondent No. 2

Mr. Mohammad Bakir Uddin Bhuiyan, Adv

...For the Respondent No. 4

Mr. Farid Uddin Khan, DAG with

Mr. Md. Anichur Rahman Khan, DAG

...For the Respondent No. 1

Judgment on: 06.11.2024

Md. Riaz Uddin Khan, J:

Rule *nisi* was issued upon an application under Article 102 of the Constitution of the People's Republic of Bangladesh asking the respondents to show cause as to why the letter issued by the respondent No. 3 under reference No. FICSD 5043(D)/2023-526 dated 15.03.2023 (Annexure-J) staying operation of the Audit and Inspection Report dated 05.05.2021 made by the Audit and Inspection Team of Bangladesh Bank recommending to refund Tk. 1,22,58750/- (one crore twenty two lac fifty eight thousand seven hundred and fifty) to the petitioner pursuant to the

complaint dated 23.06.2020 made by the petitioner arising out of credit facility availed by the petitioner should not be declared to have been issued without any lawful authority and was of no legal effect and why the respondent No. 5 should not be directed to refund Tk. 1,22,58750 (one crore twenty two lac fifty eight thousand seven hundred and fifty) to the petitioner as recommended by the Audit and Inspection Report dated 05.05.2021 and/or such other or further order or orders should not be passed as to this court may deem fit and appropriate.

Facts for disposal of this rule are that the petitioner took composite investment limit i.e. credit limit of Tk. 1500/ lac as L/C Tk. 1000/ lac and Baimuzzal Tk. 500/ lac by mortgaging land property along with Inland Bill Purchase (IBP) and thereafter also availed TK.4,70,00000/- (3,98,00000/- + 72,00000/-) from Baimuzzal account in between 29.03.2012 to 19.04.2012 from Al-Arafah Islami Bank Limited, Dakkhin Jatrabari Branch. Subsequently, the petitioner by 26.08.2013 repaid all the outstanding dues/liabilities with interest in the account of Baimuzzal maintained with the bank. Then the petitioner requested for a loan clearance acknowledgement letter but the Bank, respondent no.5 was reluctant to provide a clearance letter with a *malafide* intension only to harass the petitioner. The petitioner communicated in writing on several occasions by placing applications dated 09.01.2022 and 25.01.2022 but without any success. Then the petitioner was compelled to inform the matter to the Governor of the central bank to redress the issue and subsequently filed an application on 23.06.2020 to the General Manager, Customer Integrity and Service Department of Bangladesh Bank. Upon receiving the aforesaid application the central bank formed a special Audit and Inspection Team who upon notifying both the parties conducted an inquiry physically at Al-Arafah Islami Bank Limited, Dakkhin Jatrabari Branch on 05.05.2021

and submitted report by giving 15 recommendations out of which recommendation number 15 which is relevant for the instant purpose is produced below: ব্যাংকের নিকট গ্রাহকের নীট পাওয়ার পরিমাণ (আইবিপি হতে প্রাপ্য ৫,৪৮,৮৯,৮৫০.০০-BAI-MUZZAL সমন্বয় ৪,২৬,৩১,১০০.০০)= ১,২২,৫৮,৭৫০.০০ টাকা। সুতরাং ১,২২,৫৮,৭৫০,০০ টাকা গ্রাহকের হিসাবে ফেরত প্রদান করে বাংলাদেশ ব্যাংককে অবহিত করতে হবে। Bangladesh Bank forwarded a letter to the respondent no.5 to comply with the said report on 05.05.2021. Since the respondent no.5 did not comply with the Audit and Inspection Report of the Bangladesh Bank, the petitioner filed a representation to the Bangladesh Bank on 25.01.2023 without any success for which he was compelled to file writ petition no. 266 of 2023 before the High Court Division on 30.01.2023 and the Court were pleased to direct the Bangladesh Bank to dispose of the petitioner's representation dated 25.01.2023 within 30 days from the date of receipt the order. After getting the Court's order the respondent no.3 i.e. an Assistant Director of Bangladesh Bank issued a letter under reference no. FICSD 5043(D)/2023-526 dated 15.03.2023 staying operation of the Audit and Inspection Report dated 05.05.2021 made by the Audit and Inspection Team of Bangladesh Bank, hence the writ petition is filed.

The Respondent No.2, Bangladesh Bank entered appearance and filed affidavit-in-opposition wherein it is stated that the writ petitioner company submitted 15 (fifteen) export bills before the Sonali Bank Ltd, Sheraton Branch, amounting to Tk. 13,42,95,200 (taka thirteen crore forty two lakh ninety five thousand and two hundred) and according to Sonali Bank Ltd writ petitioner company submitted fake documents in order to misappropriate Tk.13,42,95,200 (taka thirteen crore forty two lakh ninety five thousand and two hundred) from Sonali Bank Ltd. Respondent No.4 i.e, Al-Arafah Bank issued acknowledgement that the bills were genuine and in leu of any illegal activity proved, Al-Arafah Bank shall be liable to pay the

same to Sonali Bank Ltd. In such situation the Sonali Bank has preferred 3 suits being Money Suit No. 66 of 2018, Money Suit No. 78 of 2018 and Money Suit No. 20 of 2018 wherein the writ petitioner company are party to those suits. All the above mentioned suits are now pending before the Joint District Judge, 1st Court, Dhaka. That in those complaints there are specific allegations against the writ petitioner company of *inter alia* misappropriation, embezzlement, submitting fake and forged documents, which the writ petitioner company did not disclose before Bangladesh Bank. Due to this suppression of material fact by the writ petitioner, Bangladesh Bank ordered Al-Arafah Bank (respondent no.4) to return tk. 1,22,58,750 (taka one crore twenty-two lakh fifty-eight thousand seven hundred and fifty) to the writ petitioner by Audit and inspection Report dated 05.05.2021. Upon knowing such facts from Sonali Bank Ltd, there was apparently no scope to order respondent no. 4 bank to return tk. 1,22,58,750 (taka one crore twenty-two lakh fifty-eight thousand seven hundred and fifty) to the writ petitioner, as such Bangladesh Bank was compelled to issue impugned memo no. FICSD 5043(D)/2023-526 dated 15.03.2023 staying operation of its earlier Audit and inspection Report dated 05.05.2021. The writ petitioner did not make any statement with regard to transaction with Sonali Bank Ltd and pendency of Money Suit Nos. 66 of 2018, 78 of 2018 and 20 of 2018 in the writ petition which are material facts for disposal of this instant writ petition; hence the rule is liable to be discharged.

The Respondent No.5 also entered appearance and filed affidavit-in-opposition wherein it is stated that the petitioner company did not pay all the outstanding dues/liabilities with interest in the account of Baimuazzal by 26-08-2013, rather the Baimuazzal account of the petitioner was renewed on 18-08-2013 and the said account

was classified with the outstanding liability of Tk.5.9171 crore and the said account was rescheduled for 12 months on 02.06.2015, which is evident from the sanction letter of the Baimuazzal account of the petitioner company. The petitioner somehow managed the Audit & Inspection Report dated 01.03.2021. However, the respondent No.5 bank issued a letter on 14.12.2022 to the petitioner for payment of Wakala Fee of Tk.16.78 lac in respect of IBP No. 0779310000548 date 07.03.2012 which was adjusted to the account of the petitioner on 20.03.2016 and requested the petitioner for adjustment of refundable Wakala Fee of IBP liabilities.

Respondent no.5 further stated that at the request of the Anti-Corruption Commission respondent no.5 provided information to its Head Office regarding Alvi Spinning Mills Ltd contained in Memo No. AIBL/Da:Jatra/2013/484 dated 13.05.2013 and Alvi Spinning Mills Ltd maintained its current account in Sonali Bank Ltd, Sheraton Hotel Branch whose customer was Hallmark Fashion Ltd. That Bangladesh Bank issued a circular as contained in Memo No. SEPD (AMDANI NITI) 125/2015:2156 dated 10.03.2015 for refusing to make payment of recognized and undefined 1579 Bills (586 bills are excluded) of Sonali Bank, Hotel Sheraton Branch, Dhaka. That the respondent No.5 gave its explanation step by step to the Bangladesh Bank regarding unlawful additional Wakala Fee and curtailing compensation charges vide Memo No. AIBL/HO/CCS & CMC/2021/11 dated 04.02.2021 stating that the respondent no.5 get Tk. 261.793 lakhs (Imposed compensation 147.392 lakhs + Uncharged compensation 114.401 lakhs) from the petitioner and the respondent no.5 vide Memo No. AIBL/HO/ CCS & CMC/ 2021/43 dated 08.07.2021 further gave a full explanation regarding unlawful additional Wakala fees and curtailing compensation charge of the petitioner's account. Sonali Bank Ltd has preferred 3 suits being Money Suit No. 66 of 2018, Money

Suit No. 78 of 2018 and Money Suit No. 20 of 2018 wherein the writ petitioner company are party to those suits. All the above mentioned suits are now pending before the Joint District Judge, 1st Court, Dhaka. That in those plaints there are specific allegations against the writ petitioner company of *inter alia* misappropriation, embezzlement, submitting fake and forged documents, which writ petitioner company did not disclose before Bangladesh Bank. Due to this suppression of material fact by the writ petitioner, Bangladesh Bank ordered Al-Arafah Bank (respondent no.4) to return tk. 1,22,58,750 (taka one crore twenty-two lakh fifty-eight thousand seven hundred and fifty) to the writ petitioner by Audit and inspection Report dated 05.05.2021. That having been informed about the above information regarding filing of money suits Bangladesh Bank issued the impugned order as contained in Memo No. FICSD 5043(D)/2023-526 dated 15-03-2023 (Annexure-J to the writ petition) staying operation of its earlier Audit and Inspection Report dated 05-05-2021. The petitioner company intentionally suppressed material facts in this writ petition by not disclosing the transaction with Sonali Bank Ltd and pendency of Money Suits which are essential for disposal of this writ petition and has come before this Court with unclean hands and as such cannot get any equitable relief from this Court. That the respondent bank denied the claim of the writ petitioner company and actually the petitioner company does not get any money from the respondent bank rather this respondent No.5 sent legal notice for payment of outstanding dues and as such the instant writ petition is not maintainable and the instant Rule is liable to be discharged.

Mr. Md. Anowarul Islam Shaheen, the learned advocate appearing for the petitioner submits that the respondent no.2, Bangladesh Bank being a supervisory and controlling authority over all Banks found severe irregularities and

unfair actions of the respondent no.5 with the petitioner. Upon receiving the application of the petitioner dated 23.06.2020 Bangladesh Bank formed special Audit and Inspection team who notifying both the parties conducted an inquiry physically at Al-Arafah Islami Bank Limited, Dakkhin Jatrabari Branch and submitted a report dated 05.05.2021 which is exhaustive one and the same was prepared by concerned Audit and Inspection Team upon evaluating all the relevant documents of both the sides. In that report 15 recommendations were made including direction upon the respondent no.5 to refund Tk. 1,22,58750/ (one crore twenty two lac fifty eight thousand seven hundred and fifty) to the petitioner but without rebutting the findings and reasons of the Audit and Inspection Team and without any further Audit and Inspection the respondent no.3 unilaterally with malafide intension issued the impugned letter which is liable to be declared to have been issued without lawful authority and was of no legal effect.

He then submits that the respondent no.3 who is only an Assistant Director of Bangladesh Bank alone cannot go beyond the Audit and Inspection Report dated 05.05.2021 prepared by a special Audit and Inspection Team consisting of 2 (two) Joint Directors of Bangladesh Bank, Head Office and in that view of the matter, the respondent no.3 acted without jurisdiction and as such the impugned letter is not tenable in the eye of law.

The learned advocate further submits that the impugned letter issued by the respondent no.3 is arbitrary and without application of mind since earlier a competent body of Bangladesh Bank upon audit and inspection and considering documents submitted by both the parties decided that the petitioner is entitled to get Tk. 1,22,58750/ (one crore twenty two lac fifty eight thousand seven hundred and fifty) and the respondent no.3 without hearing the

petitioner and not following due process stayed the earlier report dated 05.05.2021 and further directed to dispose of the matter on the basis of the Bank-Customer relationship which is liable to be declared to have been issued without lawful authority.

He lastly submits that the impugned letter is illegal and contemptuous since the Audit and Inspection Report was made pursuant to the order of the High Court Division upon an application filed by the petitioner seeking the intervention of Bangladesh Bank as a regulatory body for settlement of disputes between the petitioner and the respondent no.5 which was not settled earlier by the respondent no.5 under Bank-Customer relationship.

Mr. Mia Mohammad Ishtiaque, the learned advocate appearing for the respondent No.2, Bangladesh Bank submits that since writ petitioner intentionally suppressed material facts, thus failed to approach the Court in clean hand which is *sine qua non* for maintainability of this writ petition and as such the writ petition is liable to be dismissed with cost for not being maintainable.

He then submits that in the applications submitted by the petitioner company before the Governor of Bangladesh Bank the petitioner company never disclosed its alleged involvement with Hallmark scandal with Sonali Bank Ltd in any of its' representation. Writ petitioner failed to mention any of the aforementioned transaction against Sonali Bank, pending criminal proceedings and suppressing material fact misleading the Court with *mala fide* intention to gain unlawfully obtained this rule. The writ petitioner not only suppressed material fact to Bangladesh Bank but also before this Court as such the rule is liable to be discharged.

He next submits that writ petitioner's plea is based on the submission of 15 (fifteen) export bills before the Sonali Bank Ltd, amounting to Tk.13,42,95,200 (taka

thirteen crore forty-two lakh ninety-five thousand and two hundred). According to the report of Sonali Bank Ltd all the export bills submitted were fake and forged. The Audit and Inspection Team was misled by the petitioner relying on such fake claim ordered Al-Arafah Bank to return tk.1,22,58,750 (taka one crore twenty-two lakh fifty-eight thousand seven hundred and fifty) to the writ petitioner. After receiving the audit and inspection Report dated 05.05.2021, Al-Arafah Islami Bank submitted a reply on 08.07.2021 and then several meetings took place between Al-Arafah Islami Bank and Bangladesh Bank. In the meeting dated 08.09.2021 presided over by an Executive Director of Bangladesh Bank, Al-Arafah Islami Bank was directed to deposit several documents within 22.09.2021 and was also further directed to settle the issue between writ petitioner and respondent no. 4 amicably within the parameter of bank-customer relationship. After receiving the required documents from Al-Arafah Bank, as per instruction of the Executive Director, one Mr. Mohammad Sajjad Hossain, Deputy Director of Bangladesh Bank reviewed earlier audit and inspection report dated 05.05.2021 and reply of respondent no. 4 Bank along with the submitted documents and thereafter prepared a report dated 29.06.2022 (ANNEXURE-VI) and another report bearing memo no. এফাইসিএসডি/২১০১/২০২২-১৭৩২ dated 17.07.2022 (ANNEXURE-VII) and submitted the same before Executive Director of Bangladesh Bank and considering all those facts Bangladesh Bank was compelled to issue impugned memo no. FICSD 5043(D)/2023-526 dated 15.03.2022 staying operation of its earlier Audit and Inspection Report dated 05.05.2021. Since the impugned memo dated 15.03.2023 issued in compliance to the direction of this Court in writ petition no. 266 of 2023 dated 30.01.2023 in order to communicate the earlier decision of Bangladesh Bank to stay findings of audit and inspection report dated 05.05.2021, the memo impugned in this writ

petition is therefore evidently issued with lawful authority upon deriving instruction from Executive Director of Bangladesh Bank as such do not suffer from any legal infirmity.

Mr. Mohammad Bakir Uddin Bhuiyan, the learned advocate appearing for the respondent No.5 adopting all the submissions of the learned advocate of the respondent no.2 further submits that from the complaints of the aforesaid money suits, it is apparent that there are specific allegations against the writ petitioner company and its Managing Director *inter alia* misappropriation, embezzlement, submitting fake and forged documents, which writ petitioner company neither disclosed before the Bangladesh Bank nor before this Court and as such the instant writ petition is not maintainable and therefore the instant Rule is liable to be discharged.

He finally submits that the facts involved in this writ petition are disputed in different aspect and without taking evidence about the disputed facts involving the authenticity of the bills submitted by the petitioner company, the calculation of the amount of liabilities of the petitioner company and the disposal of the money suits, it cannot be decided in a summary proceeding in the writ petition and as such the instant writ petition is not maintainable and therefore the instant Rule is liable to be discharged.

We have heard the learned Advocates of both the parties, perused the applications, affidavits-in-opposition and all the documents annexed therewith.

The only contention of the learned advocate for the petitioner is that the respondent no.2, Bangladesh Bank formed special Audit and Inspection team who after notifying both the parties (the petitioner and the respondent no.5) conducted an inquiry physically at the office of respondent no.5 and submitted a report dated

05.05.2021 which is exhaustive one and the same was prepared by concerned Audit and Inspection Team upon evaluating all the relevant documents of both the sides. In that report 15 recommendations were made including direction upon the respondent no.5 to refund Tk.1,22,58750/ (one crore twenty two lac fifty eight thousand seven hundred and fifty) to the petitioner but without rebutting the findings and reasons of the Audit and Inspection Team and without any further Audit and Inspection the respondent no.3 unilaterally with *malafide* intension issued the impugned letter without any lawful authority.

In reply the advocate for the respondents contended that subsequent to the report dated 05.05.2021 prepared by the Audit and Inspection Team of the central bank it was revealed that the writ petitioner suppressed the facts of pendency of money suits and some other important documents and then the report dated 05.05.2021 was reviewed and respondent no.3 finally issued the impugned memo dated 15.03.2023 staying the earlier report dated 05.05.2021.

It appears from the above facts that the Audit and Inspection Team of Bangladesh Bank after notifying both the petitioner and the respondent no.5 at the office of the respondent no.5 conducted audit and inspection and finally prepared the report dated 05.05.2021 with 15(fifteen) recommendations including directing respondent no.4 to refund certain amounts to the petitioner. Respondents did not deny that fact. However, respondent no.2, Bangladesh Bank claimed that respondent nos.4 and 5, the Al-Arafa Islami Bank and its concerned brunch submitted some documents before it alleging submitting fake and forged documents by the writ petitioner on the basis of which the writ petitioner claimed the amounts as aforesaid and for that reason the respondent no.2 reviewed its earlier report dated 05.05.2021 as fraud vitiates everything. It further appears that while reviewing the said report prepared by a

competent authority the Bangladesh Bank did not give the writ petitioner any opportunity of being heard by issuing any notice and issued the impugned memo dated 15.03.2023 staying the report dated 05.05.2021 to the prejudice of the writ petitioner. It is the violation of the principle of natural justice as well as Article 31 of the Constitution of the People's Republic of Bangladesh. A decision taken by a competent authority can be reviewed by the higher authority if there is any such provision provided under law. But it cannot be reviewed unilaterally without giving the parties any opportunity of being heard. The respondents could not show us that there is any such provision of review. Moreover, most importantly it is admitted position that the writ petitioner was not heard during the review. Even if there is any fraud as alleged, the writ petitioner has a right to get an opportunity of being heard. In that view of the matter the impugned letter issued by the respondent No.3 under reference No. FICSD 5043(D)/2023-526 dated 15.03.2023 (Annexure-J) staying operation of the Audit and Inspection Report dated 05.05.2021 made by the Audit and Inspection Team of Bangladesh Bank is issued without any lawful authority having no legal effect. But it does not mean that the report dated 05.05.2021 prepared by the Audit and Inspection Team of Bangladesh Bank directing the respondent no.4 to pay certain amount to the writ petitioner will automatically come into effect, rather it is a rebuttable document which can be put into evidence by the parties in the competent court of civil jurisdiction.

However, the amount claimed by the writ petitioner and recommended by the Audit and inspection team of respondent no.2, Bangladesh Bank is not an admitted amount by the respondent no.5. There is claim and counter claim by the writ petitioner and the respondent no.5 and there are civil suits pending amongst the parties which are all disputed question of facts including alleged submission of fake and

forged bills by the petitioner which cannot be decided by this Court in a summary proceeding like writ jurisdiction. In such view of the matter we are not inclined to make any such direction to pay the amount as recommended by the Audit and inspection team of respondent no.2, Bangladesh Bank.

In the facts and circumstances of the case and the position of law as discussed above the Rule is **discharged with the above observations.**

Communicate the judgment and order at once.

Md. Iqbal Kabir, J:

I agree.