

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

**WRIT PETITION NO. 10276 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:

***M/S Romy Enterprise and others***

.... Petitioner

-Vs-

***Secretary, Ministry of Local Government,  
Bangladesh Secretariat Bhaban, Ramna, Dhaka-  
1000 and others.***

....Respondents.

Ms. Nahid Yesmin with  
Mr. Iqbal Hasan, Advocates

..... For the petitioner

Ms. Mahfuza Begum, Deputy Attorney General  
with Ms. Sayeda Sabina Ahmed Molly, Mr. Ali  
Akbor Khan, Assistant Attorney Generals.

..... For the Respondents-government.

**Heard on: 13.03.2024**

**Judgment on: 19.03.2024**

**Present:**

***Madam Justice Kashefa Hussain  
and  
Mr. Justice S.M. Maniruzzaman***

**S.M. Maniruzzaman, J:**

In this Rule Nisi issued under Article 102 of the Constitution of the  
People's Republic of Bangladesh, the respondents have been called upon to  
show cause as to why direction should not be given upon the respondents to

make payments for construction and development works done by the petitioners under accepted Tender Notice No. 1 of 2017-18 of ADB Development Project and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts, relevant for disposal of the Rule, in short, are that the petitioners are reputed business man. Petitioner No. 1 Md. Abu Bakkar Siddik is proprietor of Rummy Enterprise and has been enlisted contractor under Local Government Engineering Directorate, Narsingdi, vide ID No. 420/2010-11, petitioner No. 2, Md. Musharaf Hossain is proprietor of M/S Mosharaf Traders and has been enlisted contractor under Local Government Engineering Directorate, Narsingdi, vide ID No. 601/2016-2017, petitioner No. 3, Md. Nazrul Islam Khan is proprietor of M/S N. Islam and Brothers and has been enlisted contractor under Local Government Engineering Directorate, Narsingdi, vide ID No. 1<sup>st</sup> -2<sup>nd</sup> Class/2010- 2011, petitioner No. 4, Md. Mahbubur Rahman Khan is proprietor of M/S Momtaj Enterprise and has been enlisted contractor under Local Government Engineering Directorate, Narsingdi, vide ID No. Second-32 Class/2010-2011 and petitioner No. 5, Md. Tajul Islam is proprietor of M/S Kamal and Brothers and has been enlisted contractor under Local Government Engineering Directorate, Narsingdi, vide ID No. Second 16/2010-2011.

In course of petitioners' business, they had been awarded works of different constructions under ADB Project for the year of 2017-2018 of Shibpur Upazilla, Narsingdi in pursuance of Tender No. 01/2017-2018 dated 11.01.2018, wherein, petitioner No. 1 had awarded the works package No. ADP 17-18/G-35 dated 22.02.2018 "আজ কিতলা চৌরাস্তায় টয়লেট নির্মাণ" and contract

price of Tk. 1,90,000.00 (One Lac Ninety Thousand Only), petitioner No. 2 had awarded the works package No. ADP 17-18/G-28 dated 22.02.2018 "পূর্বেও গাঁও বড় বাড়ী অলেক চান্দেও বাড়ীর পার্শ্বে বক্স কালভার্ট নির্মাণ" and contract price of Tk. 1,90,000.00 (One Lac Ninety Thousand Only) and also awarded another works package No. ADP 17-18/G-12 "সৈয়দের থোলা বালিকা উচ্চ বিদ্যালয়ের উন্নয়ন" and contract price of Tk. 95,000.00 (Ninety Five Thousand Only); petitioner No. 3 had awarded the works package No. ADP 17-18/G-46 dated 22.02.2018 "ভুরবভুরিয়া বড় ব্রীজের সংলগ্ন বাজারে পাবলিক টয়লেট প্রসার খানা ও টিউবওয়েল স্থাপন" and contract price of Tk. 1,90,000.00 (One Lac Ninety Thousand Only), petitioner No. 4 had awarded the works package No. ADP 17-18/G-15 dated 22.02.2018 "দুলালপুর দাড়িপাড়া চিতার বাড়ীর রাস্তায় কালভার্ট" and contract price of Tk. 95,000.00 (Ninety Five Thousand Only) and also awarded another works package No. ADP 17-18/G-22 dated 22.02.2018 "ধানুয়া হাসপাতালের পশ্চিম পার্শ্বে খোকন ডাক্তারের বাসা হতে পুলিশের পর্যন্ত ঢাকনা সহ ড্রেন নির্মাণ কাজের অসমাপ্ত কাজ সমাপ্ত করণ" and contract price of Tk. 95,000.00 (Ninety Five Thousand Only) and petitioner No. 5 had awarded the works package No. ADP 17-18/G-10 dated 22.02.2018 "উত্তর সাধাচর ১৬নং সরকারী প্রাথমিক বিদ্যালয়ের টয়লেট ও নলকূপ নির্মাণ কাজ" and contract price of Tk. 1,90,000.00 (One Lac Ninety Thousand Only).

Pursuant to the said works, the petitioners have executed agreements with respondent No. 3 (Upazilla Engineer, Shibpur Upazilla, Narsingdi) regarding their respective package works. Upon receipt of work orders invested huge amount of money and labour and successfully completed their respective package works with full satisfaction of the concerned official of the

respondents and from the office of respondent No. 5 issued certificate for completing the respective package works of the petitioners in different dates.

After completion respective works of the petitioners, the respondents were liable to pay Tk. 1,90,000/- in favour of petitioner No.1, Tk. 2,85,000/- in favour of petitioner No. 2, Tk. 1,90,000/- in favour of petitioner No. 3, Tk. 95,000/- and 95,000/- in favour of petitioner No.4 and Tk. 1,90,000/- in favour of petitioner No.5 in total Tk. 10,45,000/- but the respondents most illegality, arbitrarily withhold the payment of the petitioners and thus causing huge loss to the petitioners. In that circumstances, the petitioners made several oral and written representations to the concerned officials of the respondents for payment, but to no avail and hence the writ petition.

Ms. Nahid Yesmin, learned Advocate appearing for the petitioner submits that the petitioners have completed their respective works as per package of Tender Notice No. 1 of 2017-18 and after completion of the works they submitted bills for payment against their works but, however the respondent No. 3 most illegally, arbitrarily withhold the payment of the petitioner's works and hence a direction may be given upon the concerned respondent to make payment of the petitioners for their respective works. Ms. Yesmin next submits that the petitioners are businessman and their right are guaranteed under the Constitution but the respondent failed to make payment against the works completed by the petitioners and such act of the respondent has violated the fundamental right of the petitioners. In view of the above the concerned respondents may kindly be directed to make payment the petitioners against their respective works. Ms. Yesmin further submits that the petitioners made several representations to the concerned respondents but the

respondents most illegally and arbitrarily without disposing the representations withhold to release the petitioners' payment and as such the concerned respondents may kindly be directed to release the petitioners' bills as per their works. In view of the above context, learned Advocate prays for making the Rule absolute.

On the other hand, Ms. Mahfuza Begum, learned Deputy Attorney General appearing for the respondent-government without controverting the facts by filing affidavit-in-opposition submits that several contracts were executed between the petitioners and respondent No. 9 in their respective works. If, the respondents violated any terms of the contract, the petitioner ought to have exhausted the proper forum but the petitioners without exhausting such proper forum has filed the instant writ petition which is not maintainable.

We have considered the submissions of learned Advocate and learned Deputy Attorney General and gone through the writ petition, relevant materials on record so appended thereto.

No doubt, Notification Award in respect of the respective works of the petitioners had issued by the respondent No. 3 and pursuant to the said Notification Awards respective contract has been executed between the petitioners and the respondent. In this regard, the moot contention of the petitioners are that pursuant to the work orders, all works were completed by the petitioners and in support of the said contention the concerned Union Parishad Chairman as well as Vice Chairman of the Upazilla Parishad and Head Master of the concerned school issued certificates in respect of finishing of the works (Annexure- D, D1-D-6). Pursuant to their works, the present

petitioners jointly made several representations before the concerned respondents for making payment of the their respective bills submitted against their works but however, the concerned respondents did not dispose of the said representations as well as failed to make payment of their bills submitted against the works. Such acts of the respondents are not tenable in the eye of law.

At this juncture, justice will better be served, if we direct the concerned respondent to dispose of the petitioners' representation which have been submitted for making their payment of the respective works.

Accordingly, respondent No. 3, Upazilla Engineer, Shibpur, Narsingdi is directed to dispose of the petitioners' representation dated 16.09.2021 (Annexure-E) for making payment of their respective bills within 30 (thirty) days from the date of receipt of a copy of this judgment and order in accordance with law.

In view of the above direction this Rule is disposed of however, without any order as to costs.

Communicate a copy of this judgment and order to respondent No. 3.

**Kashefa Hussain, J:**

I agree.