

2 SCOB [2015] HCD 54**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 9490 OF 2013

Md. Shafiqul Islam and another
..... Petitioners

-Versus-

**Government of the People's Republic of
Bangladesh and others**

.....Respondents.

Mr. Abdus Salam Mamun with
Ms. Shajeda Akter Bakul, Advocates,
.... For the petitioners.Mr. Syed Mamun Mahub, Advocate
.... For respondent No.4.Heard on 15.06.2015 and 30.06.2015.
Judgment on 01.07.2015.**Present:****Mr. Justice Md. Rezaul Hasan****And****Mr. Justice Farid Ahmed.**

A judgment or order becomes effective (subject to correction of error or review by the same Court, as the case may be) the moment it is pronounced in the open Court. A certificate to that effect issued by a learned lawyer is sufficient proof to the parties or persons concerned, according to the law declared in 44 D.L.R. (AD) 219. Besides, as per provisions of article 111 of the Constitution of the Peoples Republic of Bangladesh, the judgment passed by the Appellate Division is binding on the High Court Division too, alongwith the subordinate Courts. Hence, if the Appellate Division pronounces any judgment then it becomes binding on the High Court Division (in similar cases), whether the same is signed or not. If the High Court Division considers it just and proper to wait till the judgment is pronounced by the Appellate Division to be signed, then it (HCD) can at best keep the matter awaiting judgment. But, it should not pronounce any judgment contrary to the judgment pronounced, in the open Court, by the Appellate Division, on the matter having relevance to the case before this Division. However, to cover this interim period, this Division may pass such interim order as the ends of justice may demand.

...(Para 14)

Md. Rezaul Hasan, J.

1. This Rule Nisi, on an application under Article 102 of the Constitution of the People's Republic of Bangladesh (the Constitution), has been issued calling upon the respondents to show cause as to why the proceedings of the Special Case No.15 of 2013 arising out of Bandarban Police Station Case No.7 dated 16.07.2008 corresponding to G.R. 168 of 2008 under section 161/109 of the Penal Code read with section 5(2) of the Act II of 1947 now pending in the Court of the Senior Special Judge Bandarban, vide Annexure-E to the writ petition, and the suspension order passed under Memo No. LGED/CE/E-66/2001 (part-1) 5127 and LGED/CE/E-66/2001 (part-01) 5126 dated 01.07.2013, respectively, passed by the respondent No.06 suspending the petitioners from their post of service, vide Annexure-G and H to the writ petition, should not be declared to have been taken and done without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. In the instant writ petition the petitioners have filed two sets of supplementary affidavits. Let these affidavits be treated as part of the substantive petition.

3. The petitioners' case, in brief, is that both the petitioners have filed two petitions on 14.10.2010, under section 19Ka of the then Truth and Accountability Commission (TAC), seeking exoneration from the charges brought against them under the Anti-Corruption Act, 2004 (ACC Act, 2004) and they have fulfilled all the pre-conditions laid down in the TAC for getting exoneration from

the charges brought against them; that TAC is a special law and section 26(3) empowered the Commission to exonerate the person who is an accused under the ACC Act and ACC in writing a letter to the said Commission was informed the Court concerned to discharge the petitioners from the charges brought against them; that by two letters, both issued on 31.12.2008 (Annexures B and C respectively), under provision of section 26(3) of the TAC both the petitioners were exonerated from the charges brought against them for the reasons recorded in their two letters; that in spite of obtaining two letters of exoneration from the charges under TAC dated 31.12.2008 the Senior Judicial Magistrate, Bandarban Partattya Zila took cognizance against the accused-petitioners by the Court's Order No.10 dated 25.01.2009, which has been transferred to Senior Special Judge, Bandarban and it has been registered and re-numbered as Special Case No.15 of 2013 arising out of Bandarban Police Station Case No.07 dated 16.07.2008, corresponding to G.R. No.168 of 2008, under sections 161/109 of the Penal Code read with section 5(2) of the Act II of 1947 now pending before the Senior Special Judge, Bandarban; that the TAC having authority to exonerate the accused and having exonerated both the petitioners by two letters dated 31.12.2008 (Annexures B and C) pursuant to the application made by the petitioners to the TAC both dated 05.11.2008 (Annexures 'X' series) started proceeding which is liable to be declared illegal to have been taken and done without any lawful authority and is of no legal effect.

4. The petitioners have also challenged the virus of orders of suspension of the petitioners from their services vide both memo dated 01.07.2013 (Annexures 'H' and 'I').

5. Hence this writ petition and the Rule.

6. With reference two letters dated 31.12.2008 (Annexures 'B' and 'C'), the respondent No.4 has submitted an affidavit-in-opposition and also a supplementary affidavit to their affidavit-in-opposition denying all material facts and asserting that the action taken by the respondents are quite lawful. In the supplementary affidavit, at paragraph No.10, deep regret has been recorded as well as unconditional apology has been sought for the mistake made in that paragraph, by stating incorrect facts supported by affidavit. At paragraph No.3 of the supplementary affidavit the respondent No.7 has also shown that the ACC has taken legal step against Emon Shahriar and others, apparently that the TAC was struck down by a judgment dated 13.11.2008 reported in 16 BLC 100 and the said judgment was affirmed by the Appellate Division in C.P.L.A. No.1816 of 2010, vide judgment and order dated 16.5.2011, reported in 18 BLC (AD) 47.

7. Let the supplementary affidavit do form part of the main affidavit-in-opposition.

8. Learned Advocate Mr. Abdus Salam Mamun, appearing along with learned advocate Ms. Shajada Akter Bakul, having placed the writ petition with two supplementary affidavits, affidavit-in-opposition as well as having drawn attention to the other materials on record, first of all submits that Truth and Accountability Commission Act, 2008 (TAC) is a special law that empowered the TAC to exonerate the accused-petitioners as authorised by the provisions of section 26(3) of the TAC. Both the petitioners have accordingly filed two separate applications on 05.11.2008 (Annexure 'X' series) seeking exoneration from the charges brought against them by the ACC, subject to compliance of the conditions laid down in the said Ordinance. The TAC being satisfied, by two separate letters, both dated 31.12.2008 (Annexures 'B' and 'C' respectively), exonerated them from all charges brought against them. Copy of the said letters were forwarded to the Senior Judicial Magistrate, Bandarband Parbattya Zila, as recorded in Order No.10 dated 25.01.2009 and as mentioned in paragraph No.6 of the supplementary affidavit, sworn on 12.09.2014. In spite of receiving the said two letters, the Senior Judicial Magistrate, Bandarban Parbattya Zila, took cognizance and had transmitted the cases to the Senior Special Judge, Bandarban, wherein it has been recorded as Special Case No.15 of 2013, which is still pending before that Court. Besides, the learned Advocate further submits that both the petitioners were suspended from the services by respondent No.6 (Annexure H and H2 respectively), after they were exonerated from the charges on 31.12.2008. Accordingly, the learned Advocate asserts that the proceeding initiated against the petitioners by way of taking cognizance against them on 25.01.2009 and continuation of the said proceeding before the Senior Special Judge, Bandarban being

Special Case No.15 of 2013 as well as both the letters of suspension are liable to be declared to have been initiated and issued without lawful authority and are of no legal effect. Before conclusion, learned Advocate for the petitioners submits that one Emon Shahriar was exonerated after the TAC Ordinance was struck down by the judgment and order dated 13.11.2008 by the High Court Division, subsequently upheld by the Hon'ble Appellate Division on 16.5.2011 in CPLA No.1816 of 2010. Learned Advocate for the petitioner has referred to the case of Emon Shahriar, reported in 17 BLC (2012) 866, and submits that by the judgment delivered on 15.03.2012, in that writ petition filed by one Emon Shahriar, Rule was made absolute, and the concerned memo dated 19.10.2011 issued by the ACC against the said petitioner (Emon Shahriar) directing him to appear before respondent No.6 (in that writ petition) on 24.8.2011 was declared to have been made without lawful authority. Accordingly, he emphasis that this case has similarity to the case of Emon Shahriar and the petitioners are entitled to get similar relief as was given to Emon Shahriar, even after striking down the Ordinance on 13.11.2008. But the ACC imparted discriminatory treatment to these petitioners by continuation of the proceeding disregarding the aforesaid letters dated 31.12.2008 as well as the decision of a Bench of this Division given in the case of Emon Shahriar Vs. People's Republic of Bangladesh & others. Accordingly he summarised that there is no bar in making this Rule Absolute in spite of the fact that TAC Ordinance was struck down on 13.11.2008 by this Court.

9. Learned Advocate for the respondent No.4 Mr. Syed Mamun Mahub, on the other hand, submits that the Rule issued in this writ petition is liable to be discharged on the sole ground that letters of exoneration dated 31.12.2008 (Annexures B and C respectively) were issued after the TAC Ordinance was struck down on 13.11.2008, vide the case of Adilur Rahman Kha and others Vs. Bangladesh and others, reported in 16 B.L.C. 100 and that judgment was affirmed by the Appellate Division in CPLA No.1816 of 2010 on 16.5.2011, between Monzur Ahmed Bhuiyan and others Vs. Adilur Rahman Khan and others, reported in 15 BLC (AD) 47. As such the aforesaid two letters dated 31.12.2008, he continues, were issued when the TAC had no authority to issue such letters. He therefore submits that the Rule issued in this writ petition is liable to be discharged. As regards the case of Emon Shahriar, reported in 17 B.L.C. 866, the judgment was given by a Bench of the High Court Division stating the reasons that the judgment passed by the Appellate Division in CPLA No.1816 of 2010 was not signed at the date the judgment was pronounced in the case of Emon Shahriar. He also submits that although it was incorrectly stated in paragraph No.10 of the affidavit-in-opposition that no action was taken against Emon Shahriar, indeed, legal action was taken against him by ACC, as clarified in the supplementary affidavit, after getting the correct fact and picture. He, therefore, prayed for discharging the Rule.

10. We have heard the learned Advocates of both the sides, perused the petition, the affidavit-in-opposition and the supplementary affidavits filed by both the sides along with the documents on record.

11. It is not disputed that both the petitioners have submitted applications on 05.11.08 as per provisions of section 19Ka of the TAC Ordinance seeking exoneration from the charges brought against them, subject to fulfilment of the conditions laid down in the said Ordinance. It is also correct that the said Ordinance was a special law and that section 26(3) of the TAC Ordinance empowered the TAC to exonerate the applicants and had in fact been exonerated the applicants, by two separate letters, both of dated 31.12.2008 (Annexure B and C respectively).

12. However, we find that the TAC Ordinance 2008 was struck down by a Bench of this Division on 13.11.2008 and the said judgment was affirmed by the judgment and order dated 16.5.2011 of the Appellate Division passed in CPLA No.1816 of 2010, as reported in 15 BLC (AD) 47. As such we find that on 31.12.2008, when the two letters (Annexure B and C), were issued by TAC exonerating the two petitioners from all criminal charges brought against them, the TAC had no existence and they had no authority to issue these two letters, both dated 31.12.2008 (emphasis added).

13. We have also consulted the case reported in 17 BLC 866, wherein by a judgment dated 15.3.2012 the Rule was made absolute by a Bench of this Division. However, that case has no relevance in the disposal of this Rule. On the other hand, having considered the supplementary affidavit, filed today on behalf of respondent No.4, we find that the ACC has continued proceeding against Emon Shahriar and others. As such we find that 17 BLC 866 is of no help to the petitioners.

14. Referring to the judgment on Emon Shahriar, reported in 17 BLC 866 and so far as the question practice and procedure is concerned, our considered view is that, **a judgment or order becomes effective (subject to correction of error or review by the same Court, as the case may be) the moment it is pronounced in the open Court. A certificate to that effect issued by a learned lawyer is sufficient proof to the parties or persons concerned, according to the law declared in 44 D.L.R. (AD) 219. Besides, as per provisions of article 111 of the Constitution of the Peoples Republic of Bangladesh, the judgment passed by the Appellate Division is binding on the High Court Division too, alongwith the subordinate Courts. Hence, if the Appellate Division pronounces any judgment then it becomes binding on the High Court Division (in similar cases), whether the same is signed or not. If the High Court Division considers it just and proper to wait till the judgment is pronounced by the Appellate Division to be signed, then it (HCD) can at best keep the matter awaiting judgment. But, it should not pronounce any judgment contrary to the judgment pronounced, in the open Court, by the Appellate Division, on the matter having relevance to the case before this Division. However, to cover this interim period, this Division may pass such interim order as the ends of justice may demand.**

15. We accept the apology offered on behalf of the respondent No.4 and do hereby require them to be cautious in future in making statements supported by swearing affidavit before this Court.

16. For the above stated reasons we do not find any merit in this Rule.

ORDER

17. In the result, the Rule is discharged. The order of stay granted at the time of issuance of the Rule is hereby vacated.

18. No order as to cost.

19. Communicate this judgment and order to the Court concerned.