

3 SCOB [2015] HCD 42**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Mr. Masood Reza Sobhan with Mrs. Fatema S. Chowdhury, Mr. A.F.M. Saiful Karim, Advocates.

WRIT PETITION NO. 2515 of 2012

... For the petitioner.

Eastern Money Changer
..... Petitioner.

Mr. Md. Abdun Nur with
Mr. Md. Hafizur rahman, Advocate.

-Versus-

... For the respondents.

Bangladesh Bank and others
... Respondents.

Judgment on 06 March, 2014.

Present:

Mr. Justice Md. Ashfaquul Islam

And

Mr. Justice Md. Ashraful Kamal

Constitution of Bangladesh**Article 40:**

In the case in hand cancellation of license was indeed an unbridled arbitrary outcome of executive feat which certainly had indulged in excesses. The act has a curtailing effect upon Article 40 of the Constitution in particular. It has flouted Article 40 of the Constitution directly. The Constitution being the Supreme law of the land the framers of the same in their wisdom have made some provisions protecting the right of the citizen. To do lawful business or trade subject to restriction of law is one of those provisions which can not be curtailed or throttled in any manner by any authority.

... (Para 16)

Judgment**Md. Ashfaquul Islam, J:**

1. Eastern Money Changer, a Partnership Concern challenging the cancellation of license issued by the respondent No.1 Bangladesh Bank moved this Writ Petition and obtained the present Rule under the following terms:-

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Memo No.EEPD (LDA) 144/538/2012-168, 169 dated 05.03.2012 issued by the respondent No.1 under the signature of the respondent No. 3 Deputy General Manager, Bangladesh Bank canceling the Money Changer License No. বৈমুন্নী (অব) ১৪৪/৯৮-২৫০৫ dated 19.10.1998 (Annexure- “B”) shall not be declared to have been issued without lawful authority and is of no legal effect.”

2. Facts relevant for disposal of the Rule, inter alia, are that the petitioner is a partnership firm and has been running its business as Money Changer since 1998 after obtaining License No. বৈমুন্নী (অব) ১৪৪/৯৮-২৫০৫ dated 19.10.1998. His License has been renewed time to time. Respondent No. 1 Bangladesh Bank on 5.3.2012 issued Memo No.EEPD (LDA)

144/538/2012-168, 169 dated 05.03.2012 under the signature of the respondent No. 3 Deputy General Manager Foreign Exchange Policy Department Bangladesh Bank canceling the petitioner's said license (Annexure- "B").

3. In the petition it has been stated that in strict compliance of all the provisions of Foreign Exchange Regulation Act, 1947 the petitioner had been running its business. On 05.12.2011 a team led by the Joint-Director of the respondent No. 1 inspected the petitioner firm's premises and found that out of many only three separate transactions on separate dates were not recorded in the register of books of accounts from 1st to 5th of December, 2011. It has also been stated that the register of books of accounts were updated at once by recording the three transactions as mentioned above in respect of endorsements for travel purpose. By Annexure-"C" the petitioner explained books of accounts.

4. All of a sudden on 02.01.2012 the petitioner firm received a notice alleging irregularities found in inspection on 05.12.2011 and called for explanation from the petitioner on the same within seven days further asking him as to why his license would not be cancelled (Annexure- "D"). The petitioner firm accordingly on 11.01.2012 submitted its explanation to the respondents stating that the allegations made in the notice were not true and there were no latches whatsoever on the part of the firm (Annexure-"E"). It has been also stated that the license which was issued in the year 1998 to the petitioner allowed him to deal with all foreign currencies. The petitioner's long standing business extending over a period of 15 years remained unblemished except an occurrence at the behest of the petitioner's employees which was also handled by him with promptitude. That being the situation the petitioner impugns the Memo in question that has cancelled his license to do business as a Money Changer on the ground that the same has the curtailing effect on the fundamental rights of the petitioner as enshrined in Article 40 and 31 of the Constitution in particular and as such the same should be declared to have been issued with lawful authority and is of no legal effect.

5. Mr. Masood Reza Sobhan, the learned Counsel appearing with Mrs. Fatema S. Chowdhury, the learned Advocate for the petitioner after placing the petition and the relevant Annexures with it pressed into service several grounds. Their bone of contention is that the impugned notice has been issued without assigning any lawful reason and even without referring to any of the terms of the license or any of the provisions of Foreign Exchange Regulation Act 1947 which is arbitrary and malafide action of the respondents having curtailing effect upon the fundamental right of the petitioner guaranteed under the Constitution. Mr. Sobhan also argues that the license can be cancelled under section 3(2) (iii) of the Foreign Exchange Regulation Act 1947 (hereinafter referred to as Act) if Bangladesh Bank seems it fit to be done in a given situation. But this unfettered right, as he submits, should be exercised sparingly with due caution.

6. Mr. Sobhan placed reliance on the decision of Bangladesh vs. Tajul Islam reported in 49 DLR (AD) 177 in support of his contention. Highlighting the observations made in the said decision that the license is a legal privilege guaranteed under law and not a charity on a technical requirement or an ideal ceremony rather a mandate, he submits that a wrong has been committed exfacie by canceling the license of the petitioner. Mr. Sobhan concludes by submitting that the act of the respondent by which the license of the petitioner has been cancelled certainly is an act tainted with unbridled and capricious decision of the respondents which certainly had indulged in excesses. Therefore, he submits that in all fairness this Rule

should be made absolute declaring the order impugned against to be illegal and without any lawful authority.

7. Mr. Md. Abdun Nur, the learned counsel appearing on behalf of the respondent Bangladesh Bank by filing affidavit-in-opposition and supplementary affidavit-in-opposition, on the other hand, opposes the Rule and submits that Eastern Money Changer is not a legal person and as such writ petition is not maintainable on that score. It has been stated in affidavit-in-opposition that the license was issued to the petitioner with condition that it will follow the instructions of the Bangladesh Bank. He also placed reliance on FE Circular No.02 dated 14.01.1997 in this context wherein it has been stated in Clause 6 as under:

“ক্রয় বিক্রয়ের বিস্তারিত বিবরণ সঠিক এবং সম্পূর্ণ ভাবে হিসাব বহিতে সংরক্ষণ করিতে হইবে। সকল রেকর্ডপত্র ও হিসাব বহি সমূহ নির্দেশিত হওয়া মাত্র বাংলাদেশ ব্যাংকের পরিদর্শকগণের নিকট উপস্থাপনের জন্য প্রস্তুত রাখিতে হইবে।”

8. He submits that in utter disregard the petitioner has defaulted to comply with the said Circular. Consequently he was served with the show cause notice calling for explanation on 05.10.2011. There was also a repetition of such act. Lastly he contends that the petitioner was not up-to date in maintaining its register books wherefrom false interpolation etc was detected. The enquiry team found that the petitioner manipulated Encashment Certificate No.1420 dated 01.12.2011 where there was a insertion of U.S.\$ 4,000 manipulating of U.S.\$ 2,000/- But corresponding payment in Bangladeshi taka remained unchanged for Tk.1,55,000/- which prima facie proves their true manipulation from the side of the petitioner. It has been also alleged that manipulation of this kind has also been done in other certificate No.10733 dated 03.12.2011 (Annexure-4, 4-A and 4-B). He submits that though the petitioner gave explanation to the notice of the respondent Bangladesh Bank but it does not hold good being bereft of any legal support or sanction. The petitioner was given ample opportunity to reply the show cause notice and as such no question of violation of his fundamental right as submitted by the learned counsel of the petitioner can be resorted to in the instant petition for which the Rule is liable to be discharged outright.

9. That being the position the only question that needs to be addressed in this petition is whether under the facts and circumstances and the relevant laws on the subject the cancellation of the license of the petitioner has been justified.

10. We have heard the learned counsel of both sides at length and considered their submissions. We have also perused the papers and documents submitted by the parties carefully.

11. On the question of maintainability of the instant Writ Petition the law is well settled. Writ petition can be well founded against the partnership concern. This proposition of law is no longer a resintegra and needs no elaboration. Further in Bangladesh Telecom (Pvt.) Ltd. Vs T & T 48 DLR (AD) 20 it was held that a Writ petition cannot be resisted when a licence granted in exercise of statutory power.

12. In order to appreciate the central issue before us it would be worthwhile to quote the pertinent law by which the license of the petitioner has been cancelled. Section 3(2)(III) of the Foreign Exchange Regulation Act 1947 states:

“3. Authorized dealers in foreign exchange-

(1)The Bangladesh Bank may, on application made to it in this behalf, authorize any person to deal in foreign exchange.

- (2) As authorization under this section.
- (i) May authorize dealing in all foreign currencies or may be restricted to authorizing dealings in specified foreign currencies only.
- (ii) May authorize transactions of all descriptions in foreign currencies or may be restricted to authorizing specified transactions only.
- iii) May be granted to be effective for a specified period of within specified amounts, and may in all cases be revoked for reasons appearing to if sufficient by the Bangladesh Bank.”

13. On a plain reading of section it reveals that in a fit case Bangladesh Bank certainly can take any decision for revoking license of any person which has been issued for a fixed period. The right reserved under law unquestionably is unfettered and absolute right. But when we glean the entire scenario of the case a question pertinently comes to our mind whether the manner by which the license of the petitioner had been cancelled was well justified in exercising its jurisdiction under the quoted law. The answer would be clarified upon the discussion of another vital aspect which has been unveiled by my brother Justice Md. Ashraf Kamal. He pointed out that there are some remedial provisions in the Act itself viz, section 23 read with section 22 and section 19 which the respondents under the situation could have resorted to and could very well proceed against the petitioner instead of canceling his license. I also endorse my brother’s view.

14. The Constitution of ours, which is the Supreme law of the land has protected and guaranteed some fundamental rights of the citizen. The provisions of the Constitution are self executing. Article 40 of the constitution in particular have a positive bearing on the issue which states:

“Subject to any restrictions imposed by law, every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful”

Further Article 31 says:

“To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law”

15. In the decision referred to above our Appellate Division while upholding the decision of this Division declaring cancellation of a license under section 14(1) of the Immigrant Ordinance, 1982 to be illegal observed:

“A license in a commercial sense is not a charity done to a person but a privilege accorded generally on payment of a fee. Under section 10 of the Ordinance a licensee is required to pay “such security and fee as may be prescribed”. The respondent paid Taka 5 lakh as security which was liable to be forfeited upon cancellation of the license. So, the cancellation of a license is a serious matter adversely touching a person’s pecuniary interest, more than that, it affects a fundamental right of a citizen to conduct any lawful trade or business subject to certain restrictions imposed by law. The Court would always insist that an authority exercising such a drastic power of cancellation acts strictly according to law and always with fairness.”

16. In the case in hand cancellation of license was indeed an unbridled arbitrary outcome of executive feat which certainly had indulged in excesses. The act has a curtailing effect upon Article 40 of the Constitution in particular. It has flouted Article 40 of the Constitution directly. The Constitution being the Supreme law of the land the framers of the same in their wisdom have made some provisions protecting the right of the citizen. To do lawful business or trade subject to restriction of law is one of those provisions which can not be curtailed or throttled in any manner by any authority. In the case of Chairman REB v Abdul Jalil 3 B LC (AD) 79 upholding the decision of the High Court Division reported in Abdul Jalil v REB 45 DLR 24, the Appellate Division maintained that the decision taken by Rural Electrification Board (REB) barring all ex-employees of the Board from participating in any tender is unreasonable as offended to Article 40 of the Constitution.

17. Inevitably this mandate of the Constitution deserves protection by our interference in the context of the case. Lord Denning also preached the same ideal when he said “Silence in not an option when things are ill-done”. [R. Vs Metropolitan Police Commissioner (1968) 2 All.E.R-139] we are not oblivious but alive to that saying.

18. Fortified with the decisions of the Appellate Division as referred to above, in particular 49 DLR (AD) 177 all of which are binding on us and conjunct with the observations of our own we are of the view that the act of the respondents canceling the license of the petitioner has been done without lawful authority having no legal effect.

19. In the result, the Rule is made absolute. The order impugned against is declared to have been issued without lawful authority and is of no legal effect and as such set aside.

20. Communicate this order at once.