

4 SCOB [2015] HCD 115**HIGH COURT DIVISION
(Special Original Jurisdiction)**

Writ Petition No. 9546 of 2014

Kazi Mazharul Islam, son of Kaqzi Mosharef Hossain and Hosne Ara Begum, Water Kingdom, Flat No.: A/3, House No. 39/A, Dhammondi R/A, Dhanmondi, Dhaka-1205.

...Petitioner.

Versus

**Secretary, Ministry of Home Affairs,
Government of the People's Republic of
Bangladesh, Bangladesh Secretariat
Building, Dhaka and others.**

... Respondents.

Present:**Mr. Justice Shamim Hasnain****And****Mr. Justice Mohammad Ullah****Article 36 of the Constitution of Bangladesh:****If the government is allowed to restrict a person from going abroad at its discretion, then Article 36 of the Constitution will become nugatory. This Court being the guardian of the Constitution cannot condone such practice. ... (Para 6)****Judgment****Mohammad Ullah, J:**

1. This *Rule Nisi* was issued calling upon the respondents to show cause as to why hindrance and interception by the respondents to and of the petitioner's departure on 19.09.2014 from Hazrat Shahjalal International Airport, Dhaka, and thereby barring him from boarding his flight to London, United Kingdom, should not be declared to be without lawful authority and why the respondents should not be directed to allow the petitioner to depart and re-enter Bangladesh as and when necessary in exercise of his fundamental right to freedom of movement.

2. Short facts, relevant for the purpose of disposal of this Rule, are that the petitioner is a professor of Orthopedics and Head of Department of Orthopedics, Shahabuddin Medical College, Gulshan, Dhaka. It is stated that the petitioner has been prevented from leaving Bangladesh without any justification or cogent explanation. No reason was offered by the respondents or any Immigration Official either at the time of refusal or any time thereafter although the petitioner possessed all relevant and valid travel documents including a valid Bangladeshi Passport, valid visa, and a ticket. Moreover, there is no criminal proceedings debarring the petitioner from leave the country pending in any court of law. Further the actions of the respondents are violative of the fundamental rights guaranteed under Articles 31, 36 and 41 of the Constitution; hence the writ-petition. The petitioner has disclosed in a supplementary affidavit that he has been suffering from cardiac disease and that he needs better treatment abroad; hence he is to leave this country at once for his treatment purposes.

3. Mr. Nitai Roy Chowdhury, learned Advocate appearing on behalf of petitioner, reiterates the aforesaid facts and further contends that the petitioner is to leave this country for his better treatment abroad at once and that it is within the ambit of the fundamental rights of the petitioner guaranteed under Article 36 of the Constitution.

4. Mr. Sashanka Shekhar Sarker, learned Deputy Attorney General appearing with Mr. Arobindo Kumar Roy and Mr. Shahidul Islam Siddique, learned Assistant Attorneys General on

Mr. Nitai Roy Chowdhury

... For the Petitioner.

Mr. Sashanka Shekhar Sarker, DAG with

Mr. Arobinda Kumar Roy, A.A.G and

Mr. Shafiqul Islam Siddique, A.A.G

... For the respondent no.1.

Heard on The 4th March, 2015.Judgment on The 5th March, 2015.

behalf of the respondent no. 3, on the other hand, contends that the petitioner is under surveillance by the concerned authority of the government and during such surveillance he should not be allowed to leave this country. Mr. Sarker, submits further that there is positive information with the intelligent agency that the petitioner intends to go abroad for impending the War Crime Tribunal proceedings initiated by the government. It has been contended that the petitioner also has links with an International terrorist organization.

5. We have heard the learned Advocates from both the parties and perused the materials on record including the writ petition, annexures thereto and supplementary affidavits and affidavit-in-opposition filed by the respondent no.3

6. The petitioner has impugned the action of the respondents in preventing him from leaving Bangladesh for United Kingdom. It appears that the petitioner on 19th September, 2014 arrived at Hazrat Shahjalal International Airport for going to the United Kingdom. He completed check in formalities and was issued a boarding pass by the staff of the Emirates Airlines. The boarding time was fixed at 21:30 on 19th September, 2014. While the Immigration Officer was scrutinizing the Passport and Visa of the petitioner, the immigration police arrived at the immigration desk and informed the petitioner that he had instructions from higher authorities not to permit him from leaving the country. When the petitioner asked for the reason of his refusal, the respondents could not show any valid document for the purpose of stopping the petitioner from leaving the country. At the time of hearing the learned Deputy Attorney General has not been able to cite a single law on the basis of which the petitioner is being restricted from leaving the country. The framers of the Constitution made special provision to protect the freedom of movement of citizens. Article 36 of the Constitution guaranteed freedom of movement subject to any reasonable restriction imposed by law in the public interest. Every citizen has the right to move freely throughout Bangladesh, to reside and settle in any place in Bangladesh and to leave and re-enter Bangladesh. This means the article permits imposition of restrictions but such restrictions must be reasonably needed in the public interest. Without the backing of law imposition of restriction on the freedom of movement of the citizens by the government authorities or by an executive order of the government will be unconstitutional. Mere assertion of the government that it has secret information that the petitioner will conduct activities abroad against the ongoing proceedings of the international war crimes cases or against the verdict of the war crime tribunal are insufficient to restrain the petitioner from leaving the country. The petitioner filed supplementary-affidavit having denied the alleged activities as brought against him about controverting the war crime tribunal's proceedings abroad. If the government is allowed to restrict a person from going abroad at its discretion, then Article 36 of the Constitution will become nugatory. This Court being the guardian of the Constitution cannot condone such practice. Furthermore, we have noticed that neither any criminal proceeding is pending against the petitioner nor he is wanted in any other criminal case, even no custodial order or warrant by a court of law under the laws of the land is pending against the petitioner. In such a situation, we are of the view that the act and conduct of the respondents in preventing the petitioner from leaving the country should not only be declared unlawful, but violative of the fundamental rights of the petitioner. Regard being had to the above discussions of law and facts, we are of the view that the Rule has substance and as such the same should succeed.

7. In the result, the Rule is made absolute.

8. The respondents are directed to allow the petitioner to depart and re-enter Bangladesh as and when necessary in exercise of his fundamental right to freedom of movement subject to any reasonable restrictions imposed by law in the public interest.