IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

Suo-Moto Rule No.16 of 2017

(under Article 102 of the constitution of the People's Republic of Bangladesh and Rule 10 under chapter XIA of the Supreme Court of Bangladesh (High Court Division) Rules, 1973.)

The State

----Petitioner

-VERSUS-

Registrar General, Supreme Court of Bangladesh and others

---Respondents

Mr. Badiuzzaman Tarafdar, Advocate

---For Suo-Moto Rule

Mr. Mahbubey Alam, Attorney General with
Mr. Farhad Ahmed, DAG

---For the State

Mr. Mainul Hosein, Advocate with
Mr. Jahedul Islam, Advocate and
Mr. Moniruzzaman Howlader, Advocate

---For the Respondent No.3

Mr. Md. Khurshid Alam Khan, Advocate

---For the Respondent No.4 (ACC)

Mr. Joynul Abedin, Advocate with
Mr. Probir Neogi, Advocate and
Mr. A.M. Aminuddin, Advocate

--- Amice Curiae(s)

Heard on 19.10.2017, 24.10.2017,31.10.2017 & Judgment on 14.11.2017

Present:

Mr. Justice M. Enayetur Rahim

And

Mr. Justice Shahidul Karim

M. Enayetur Rahim, J:

This Suo-Muto Rule was issued calling upon the Respondents to show cause as to why the letter under Memo No. 506 /2017 এসসি (এডি) dated 28.03.2017 issued by Respondent No.2 shall not be declared to have been issued without lawful authority and is of no legal

effect and/or pass such other of further order or orders as to this Court may seem fit and proper.

The back ground facts leading to the issuance of the Suo Moto Rule is as follows:

Mr. Badiuzzaman Tarafder, an Advocate of this Court having drawn our attention to a letter bearing Memo No. 506/2017 এসসি (এডি) dated 28.03.2017 issued by the Additional Registrar, Appellate Division of this Court sought for an appropriate order on the matter.

The content of said letter runs as follows:

"বাংলাদেশ সুপ্রীম কোর্ট

আপীল বিভাগ, ঢাকা।

স্মারক নং-৫০৬/২০১৭ এসসি (এডি) তারিখ-২৮/০৩/২০১৭খ্রিঃ

বিষয়ঃ বাংলাদেশ সুপ্রীম কোর্ট, আপীল বিভাগের সাবেক মাননীয় বিচারপতি জনাব মোঃ জয়নুল আবেদীনের দাখিলকৃত সম্পদ বিবরণীর সুষ্ঠু যাচাই/অনুসন্ধানের স্বার্থে সংশ্লিষ্ট রেকর্ডপত্র/কাগজপত্রাদি দুর্নীতি দমন কমিশনের কার্যালয়ে প্রেরণ প্রসঙ্গে।

সূত্রঃ দুদক/অ.প.ম.ল./মা.ল./৯০/২০১৬/৭৫৬৯ তারিখ: ০২/০৩/২০১৭ খ্রিঃ, দুর্নীতি দমন কমিশন, প্রধান কার্যালয়, ১, সেগুন বাগিচা, ঢাকা-১০০০।

উপযুক্ত বিষয় ও সূত্রের প্রেক্ষিতে নির্দেশিত হয়ে জানানো যাচ্ছে যে, মাননীয় বিচারপতি জনাব জয়নুল আবেদীন দীর্ঘকাল বাংলাদেশ সুপ্রীম কোর্টের হাইকোর্ট বিভাগ এবং আপীল বিভাগের বিচারক হিসেবে দায়িত্ব পালন করেন। দায়িত্ব পালনকালীন সময় তিনি অনেক মামলার রায় প্রদান করেন। অনেক ফৌজদারী মামলায় তাঁর প্রদত্ত রায়ে অনেক আসামীর ফাঁসিও কার্যকর করা হয়েছে। গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ১১১ অনুচ্ছেদ অনুযায়ী মাননীয় বিচারপতি কর্তৃক প্রদত্ত রায় সকলের উপর বাধ্যকর। এহেন পরিস্থিতিতে সর্বোচ্চ

আদালতের একজন অবসরপ্রাপ্ত বিচারপতির বিরুদ্ধে দুদক কোনো ব্যবস্থা গ্রহণ করলে তাঁর প্রদত্ত রায়সমূহ প্রশ্নবিদ্ধ হবে এবং জনমনে বিভ্রান্তির উদ্রেক ঘটবে।

২। বর্ণিত অবস্থায়, সাবেক মাননীয় বিচারপতি জনাব জয়নুল আবেদীন-এর বিরুদ্ধে দুর্নীতি দমন কমিশনের কোনোরকম ব্যবস্থা গ্রহণ করা সমীচিন হবে না মর্মে সুপ্রীম কোর্ট মনে করে।

৩। বিষয়টি আপনার সদয় অবগতি ও প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য প্রেরণ করা হলো।

(অরুণাভ চক্রবর্ত্তী)

অতিরিক্ত রেজিস্ট্রার

ফোনঃ ৯৫৭২১৭১

মহাপরিচালক

দুর্নীতি দমন কমিশন

প্রধান কার্যালয়

১, সেগুন বাগিচা, ঢাকা-১০০০।

দৃষ্টি আকর্ষণঃ

সহকারী পরিচালক

বিশেষ অনুসন্ধান ও তদন্ত-২

দুর্নীতি দমন কমিশন, প্রধান কার্যালয়, ঢাকা।"

Upon perusal of the above letter and having heard Mr. Badiuzzaman Tarafder, learned Advocate who placed the letter in question before us, as well as Mr. Khurshid Alam Khan, an Advocate for the Anti-Corruption Commission, who was present in the Court, we being *prima facie* satisfied that a public wrong of

grave nature has occurred and therefore, to protect and uphold the image and dignity of the judiciary the legality of the said letter is required to be examined. Thus, we were constrained to issue the above Suo-Muto Rule in exercise of power conferred by Article 102 of the constitution of the People's Republic of Bangladesh and Rule 10 under chapter XIA of the Supreme Court of Bangladesh (High Court Division) Rules, 1973.

Having considered the public importance involved in the matter, we feel it expedient to take assistance of some senior lawyers of the Bar and as such we appointed 1. Mr. Joynul Abedin, Senior Advocate, 2. Mr. Probir Neogi, Senior Advocate and 3. Mr. A.M. Amin Uddin, Senior Advocate as Amice curiae.

Respondent No.3 and Respondent No.4 filed two separates affidavit in opposition.

The Respondent No.3 in his affidavit contended that he was elevated as a judge of the Appellate Division of the Hon'ble Supreme Court of Bangladesh in the year 2004 and retired on 01.01.2010 as a Judge of said Division. Soon after the respondent laid down his robe Anti-Corruption Commission (hereinafter referred to the Commission) by a letter dated 18.07.2010 asked him to submit his property/wealth statements. The respondent accordingly submitted his

property/wealth statements on 08.08.2010 to the Commission. Thereafter, on 25.10.2010 the Commission again asked for further statements. Accordingly, the respondent submitted further statements on 03.11.2010. The Commission after having received the property/wealth statements of the respondent duly examined and scrutinized the above statements by making extensive inquiry and investigations and became satisfied that the respondent had acquired no assets and properties beyond his known source of income. In this views of the matter, the Commission did not proceed further in the matter and kept quiet for about long 7(seven) years until 02.03.2017. However, on 02.03.2017 the Commission wrote a letter dated 02.03.2017 to the Registrar General of the Supreme Court requesting to send the record concerning the respondent for scrutiny of his property/wealth statements. The Supreme Court thereupon through its concerned officer, Respondent No.2, by the impugned letter dated 28.03.2017 informed the Commission that the respondent as a Judge of the Supreme Court delivered various important judgments. Hence any further inquiry in the matter would affect those judgments and in this connection Article III of the Constitution was referred to in the letter expressing anxiety as to the binding effect of those judgments over every one including all other Courts. Despite such request made

by the Supreme Court, the Commission started further inquiry and has still been continuing with such inquiry against the respondent allegedly for the purpose of scrutiny of his property/wealth statements submitted on 08.08.2010 and 03.11.2010.

It is further contended that further inquiry presently initiated by the Commission for the purpose of scrutiny of the property/wealth statements of the respondent after about 7(seven) long years as it was already done is mala-fide and motivated and the same is being done for an ulterior motive and for a collateral purpose. Since the Commission wanted to commence further inquiry into the matter in the name of scrutinizing the property/wealth statements of the respondent submitted by him about 7(seven) years back in 2010 such inquiry in the matter was not considered by the Supreme Court as genuine and bonafide. In such facts and circumstances the Supreme Court by the impugned letter asked the Commission not to make any further inquiry now. But subsequently on the insistence of the Commission Supreme Court administration forwarded the requested documents/papers concerning the respondent to it and since then the Commission has been making the inquiry till now. The Respondent No.3 also contended that the learned Advocate Badiuzzaman Tarafdar who brought the impugned letter dated 28.032017 to the notice of this

Court intending to show that the Supreme Court in the Appellate Division acted malafide in asking the Commission not to initiate any action against the respondent. Jurisprudence of justice system demands that no court shall pass any order in futility. Since the Commission in disregard of the said letter dated 28.03.2017 has initiated further inquiry, the same (letter) has become infructuous. Hence the present rule merits no consideration and is liable to be discharged.

The Respondent No.4, Anti-Corruption Commission, in it's affidavit contended that on 01.03.2017 Md. Hafizur Rahman, Assistant Director, Special Inquiry and Investigation-2, Durnity Daman Commission, Head Office, Dhaka issued a letter to the Registrar General, Bangladesh Supreme Court, Dhaka being Memo No.দুদক/অ.প.মা.ল./মা.ল./৯০/২০১৬/ ৭৫৬৯/১(২) dated 02.03.2017 for supplying the necessary documents with regard to Respondent No.3, annexure-X. In reply to that the Supreme Court authority under the signature of respondent No.2 issued the impugned letter addressed to the Director General, Anti Corruption Commission. The Commission on 30.04.2017 vide annexure-X-I informed the Director, Money Laundering, Durnity Daman Commission, Dhaka with regard to the veracity of the impugned letter that the respondent No.2 confirmed that on the verbal instruction of the

Hon'ble Chief Justice of Bangladesh he issued the impugned letter.

Subsequently on 08.10.2017 said office of the Commission again issued a letter as per decision of the Commission addressing to the Registrar General, Supreme Court of Bangladesh for supplying the necessary documents and papers as mentioned in the letter to the Commission. In pursuance of the aforesaid letter the respondent No.2 submitted the relevant documents before the Director General, Durnity Daman commission, Dhaka.

It is further contended by the Respondent No.4 that the Commission is a statutory body established under the Durnity Daman Commission Ain, 2004 (hereinafter referred as the Ain of 2004). The matter has got a public importance and as such the Commission has got power to hold inquiry and investigation about any allegation relating to the offence under the schedule of the said Ain as per law.

Section 19 of the Ain of 2004 Provides respective authority to the Commission for production of documents, amongst others, for investigation or inquiry as to corruption.

Upon a close scrutiny of the section 19 of the Ain of 2004 it appears that under sub-section (1) and (2) of the said section the Commission has wide

jurisdiction to inquire or investigate any allegation whatsoever as covered in its schedule and in so doing may direct the authority concerned for production of the relevant documents, be it, public or private. In compliance of the said direction the authority concerned shall be bound to supply the same. In view of the clear provision of law, it is apparent that during the course of 'inquiry' by the Commission the respondent No.2 committed serious illegality in issuing the impugned order and as such the same is liable to be declared illegal and without jurisdiction.

Respondent No.1 and 2 did not contest the Rule; however, through official process they submitted relevant documents which were forwarded to the Commission pursuant to the impugned letter and informed the court that the Supreme Court administration has already complied with the impugned letter by providing the relevant documents to the Commission as sought by it.

Mr. Bodiuzzaman Tarafdar, the learned Advocate who brought up the impugned letter to our notice has appeared with the leave of the Court.

Supporting the Rule he submits that in view of the provision of section 19 of the Ain of 2004 every authorities in the country including the Court are

legally bound to provide information and documents as sought by the Commission in the process of an inquiry or investigation, as the case may be. Willful disregard to any such order of the Commission constitutes punishable offence. The concerned persons of the Supreme Court have violated the mandatory provision of law by issuing the impugned letter and as such they are liable to be prosecuted as per provision of section 19(3) of the said the Ain of 2004.

Mr. Mainul Hosein, learned Advocate appearing for the Respondent No.3 submits, that the Commission in the year 2010 asked the respondent to submit statement of his property/wealth and accordingly he complied with by submitting the same and thereof the Commission did not proceed further in the matter and kept quiet for long about 7(seven) years until 02.03.2017. However, on 02.03.2017 the Commission wrote a letter dated 02.03.2017 to the Registrar General of the Supreme Court requesting to send the record concerning the respondent for scrutiny of his property/wealth statements. The Supreme Court thereupon through its concerned officer, Respondent No.2, by the impugned letter dated 28.03.2017 informed the Commission that the respondent as a Judge of the Supreme Court delivered various important judgments. Hence any further inquiry in the matter would affect those judgments and in this

connection Article III of the Constitution was referred to in the letter expressing anxiety as to the binding effect of those judgments over every one including all other Courts. Since the Commission in disregard of the said letter dated 28.03.2017 has initiated further inquiry, the same (letter) has become infructuous. Hence the present rule merits no consideration and is liable to be discharged.

Mr. Md. Khurshid Alam Khan, the learned Advocate appearing for the Commission, Respondent No.4, after reiterating the provision of section 19 of the Ain of 2004 submits that the Commission being a statutory body constituted under the law has got the power to make inquiry or investigation as the case may be, against any person on the basis of reliable information made before it. The Commission in view of the provision of section 19 of the Ain of 2004 asked the Supreme Court authority to provide certain informations and documents as mentioned in the letter dated 28.03.2017, annexure-X, for the purpose of inquiry with regard to respondent No.3. However, the Supreme Court authority as per instruction of the Hon'ble Chief Justice by the impugned order informed the Commission that it would not be proper (সমীচিন হবে না) to take any action against Justice Joynul Abedin on the plea that he delivered so many verdicts as a judge and thus, his those verdicts might have been

questioned. The Supreme Court authority cannot give such opinion which is not only unjust rather tantamount to interference in the inquiry process too.

Mr. Mahbubey Alam, the learned Attorney General and Mr. Joynul Abedin, Mr. Probir Neogi, and Mr. A.M. Aminuddin, the learned Amice Curiae(s) in a chorus voice submits that there is no room to support the impugned letter.

The main contentions of their submissions are that the Supreme Court authority in issuing such letter has in fact tarnished the dignity and image of the highest Court of the Country and, that under the constitution and prevailing laws of the country other than the President, during his term of office, nobody has got any immunity from Criminal Proceeding. They further submit that the impugned letter is nothing but an attempt to create obstacle in the process of an ongoing inquiry against the respondent No.3 and as such the impugned letter has been passed without lawful authority and is of no legal effect.

On our query regarding maintainability of the instant Rule as the impugned letter has been issued as per verbal instruction of the Hon’ble Chief Justice, the learned Attorney General and all the Amice Curiae(s) have opined that the Rule is maintainable and the impugned letter is very much amenable to judicial review as the same is an

administrative order though issued on the verbal instruction of the Hon'ble Chief Justice.

However, Mr. Joynul Abedin, the learned Amice Curiae in his submission further added that the conduct of the Commission is not fair and transparent as the Commission used to initiate inquiry or investigation in a pick and choose policy. He further submits that it is shameful that for the last 7(seven) years the Commission has failed to complete the inquiry against respondent No.3, who is none but a retired judge of this Court. This unusual long process in the inquiry is nothing but harassing and humiliating for him.

Before dwelling upon the issue involved in the case, we feel it necessary to see the relevant provisions of law. Section 17 of the Ain of 2004 deals with the functions of the Commission which runs as follows:

> "১৭। কমিশনের কার্যাবলি।- কমিশন নিম্নবর্নিত সকল বা যে কোন কার্য সম্পাদন করিতে পারিবে, যথাঃ- (ক) তফসিলে উল্লিখিত অপরাধসমূহের অনুসন্ধান ও তদন্ত পরিচালনা;
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> (খ) অনুচ্ছেদ (ক) এর অধীন অনুসন্ধান ও তদন্ত পরিচালনার ভিত্তিতে এই আইনের অধীন মামলা দায়ের ও পরিচালনা;
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> (গ) দুর্নীতি সম্পর্কিত কোন অভিযোগ স্বউদ্যোগে বা ক্ষতিগ্রস্ত ব্যক্তি বা তাহার পক্ষে অন্য কোন ব্যক্তি কর্তৃক দাখিলকৃত আবেদনের ভিত্তিতে অনুসন্ধান;

(ঘ) দুর্নীতি দমন বিষয়ে আইন দ্বারা কমিশনকে অর্পিত যে কোন দায়িত্ব পালন করা;

(ঙ) দুর্নীতি প্রতিরোধের জন্য কোন আইনের অধীন স্বীকৃত ব্যবস্থাদি পর্যালোচনা এবং কার্যকর বাস্তবায়নের জন্য রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;

(চ) দুর্নীতি প্রতিরোধের বিষয়ে গবেষণা পরিকল্পনা তৈরি করা এবং গবেষণালব্ধ ফলাফলের ভিত্তিতে করণীয় সম্পর্কে রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;

(ছ) দুর্নীতি প্রতিরোধের লক্ষ্যে সততা ও নিষ্ঠাবোধ সৃষ্টি করা এবং দুর্নীতির বিরুদ্ধে গণসচেতনতা গড়িয়া তোলার ব্যবস্থা করা;

(জ) কমিশনের কার্যাবলি বা দায়িত্বের মধ্যে পড়ে এমন সকল বিষয়ের উপর সেমিনার, সিম্পোজিয়াম, কর্মশালা ইত্যাদি অনুষ্ঠানের ব্যবস্থা করা;

(ঝ) আর্থ-সামাজিক অবস্থার প্রেক্ষিতে বাংলাদেশ বিদ্যমান বিভিন্ন প্রকার দুর্নীতির উৎস চিহ্নিত করা এবং তদনুসারে প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;

(ঞ) দুর্নীতির অনুসন্ধান, তদন্ত, মামলা দায়ের এবং উক্তরূপ অনুসন্ধান, তদন্ত ও মামলা দায়েরের ক্ষেত্রে কমিশনের অনুমোদন পদ্ধতি নির্ধারণ করা; এবং

(ট) দুর্নীতি প্রতিরোধের জন্য প্রয়োজনীয় বিবেচিত অন্য যে কোন কার্য সম্পাদন করা ।”

Section 19 of the said Ain relating to Special Powers of the commission in inquiry or investigation which reads as follows:

"১৯। অনুসন্ধান বা তদন্তকার্যে কমিশনের বিশেষ ক্ষমতা।-(১) দুর্নীতি সম্পর্কিত কোন অভিযোগের অনুসন্ধান বা তদন্তের ক্ষেত্রে, কমিশনের নিম্নরূপ ক্ষমতা থাকিবে, যথাঃ-

(ক) সাক্ষীর সমন জারি ও উপস্থিতি নিশ্চিতকরণ এবং শপথের মাধ্যমে সাক্ষীকে জিজ্ঞাসাবাদ করা;

(খ) কোন দলিল উদঘাটন এবং উপস্থাপন করা;

(গ) শপথের মাধ্যমে সাক্ষ্য গ্রহণ;

(ঘ) কোন আদালত বা অফিস হইতে পাবলিক রেকর্ড বা উহার অনুলিপি তলব করা;

(ঙ) সাক্ষীর জিজ্ঞাসাবাদ এবং দলিল পরীক্ষা করার জন্য পরোয়ানা জারি করা; এবং

(চ) এই আইনের উদ্দেশ্য পূরণকল্পে, নির্ধারিত অন্য যে কোন বিষয়।

(২) কমিশন, যে কোন ব্যক্তিকে অনুসন্ধান বা তদন্ত সংশ্লিষ্ট বিষয়ে কোন তথ্য সরবরাহ করিবার জন্য নির্দেশ দিতে পারিবে এবং অনুরুপভাবে নির্দেশিত ব্যক্তি তাহার হেফাজতে রক্ষিত উক্ত তথ্য সরবরাহ করিতে বাধ্য থাকিবেন।

(৩) কোন কমিশনার বা কমিশন হইতে বৈধ ক্ষমতাপ্রাপ্ত কোন কর্মকর্তাকে উপ-ধারা (১) এর অধীন ক্ষমতা প্রয়োগে কোন ব্যক্তি বাধা প্রদান করিলে বা উক্ত উপ-ধারার অধীন প্রদত্ত কোন নির্দেশ ইচ্ছাকৃতভাবে কোন ব্যক্তি অমান্য করিলে উহা দন্ডনীয় অপরাধ হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনূর্ধ্ব ৩(তিন) বৎসর পর্যন্ত যে কোন মেয়াদের কারাদন্ডে বা অর্থদন্ডে বা উভয় প্রকার দন্ডে দন্ডনীয় হইবেন।"

Upon meticulous examination of the above provisions of law it is crystal clear that for the

purpose of inquiry or investigation, as the case may be, the commission has got the following unfettered powers:

i) to issue summon to anybody to appear before it;

ii) for production of any documents;

iii) take evidence on oath;

iv) calling for records from any court or public office; and

v) to take any such steps for the purpose of fulfillment of the Ain of 2004.

Sub-section 2 of the said section clearly provides that the concerned person/authority who is to be asked to provide any information for the purpose of inquiry or investigation is legally bound to provide such information to the Commission and sub-section (3) provides punishment if the concerned person willfully disobey or disregard the order of the Commission.

If we examine the impugned letter dated 28.05.2007 coupled with the above provisions of law then we have no hesitation to hold that by issuing the same the Supreme Court authority had flouted the above provisions of law and that the opinion expressed in the letter that it would not be proper

(সমীচিন হবে না) to take any action against respondent No.3 is nothing but an attempt to create obstacle in the process of inquiry against said respondent.

In the impugned letter it is categorically mentioned to the effect that:

> "মাননীয় বিচারপতি জনাব জয়নুল আবেদীন দীর্ঘকাল বাংলাদেশ সুপ্রীম কোর্টের হাইকোর্ট বিভাগ এবং আপীল বিভাগের বিচারক হিসেবে দায়িত্ব পালন করেন। দায়িত্ব পালনকালীন সময় তিনি অনেক মামলার রায় প্রদান করেন। অনেক ফৌজদারী মামলায় তাঁর প্রদত্ত রায়ে অনেক আসামীর ফাঁসিও কার্যকর করা হয়েছে। গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ১১১ অনুচ্ছেদ অনুযায়ী মাননীয় বিচারপতি কর্তৃক প্রদত্ত রায় সকলের উপর বাধ্যকর। এহেন পরিস্থিতিতে সর্বোচ্চ আদালতের একজন অবসরপ্রাপ্ত বিচারপতির বিরুদ্ধে দুদক কোনো ব্যবস্থা গ্রহন করলে তাঁর প্রদত্ত রায়সমূহ প্রশ্নবিদ্ধ হবে এবং জনমনে বিভ্রান্তির উদ্রেক ঘটবে।"
>
> [Underlines supplied]

The learned Attorney General and all the Amice Curiae(s) candidly submit that the consideration of above extraneous facts by the Supreme Court administration in forming opinion not to take any action against the respondent No.3 is inconsistent with the prevailing laws of the country including the Supreme law, the constitution in particular. Article 27 of the constitution has contemplated that all citizens are equal before law and thus, such opinion of the Supreme Court administration cannot be said bonafide, fair and reasonable.

The legal principle of 'Rule of Law' reminds us of the famous words of the English jurist, Henry de Bracton-"The King is under no man but under God and the Law". No one is above law. The dictum- "Be you ever so high, the law is above you" is applicable to all, irrespective of his status, religion, caste, creed, sex or culture. The constitution is the supreme law. All the institutions, be it legislature, executive or judiciary, being created under the constitution, cannot ignore it.

It is by now well settled that 'exercise of discretion on extraneous facts is illegal' (Ref: 2008 BLD, 270) and, that 'exercise of discretion will be invalid if the authority in exercise of it has either taken into considerations matters which are not relevant or has left out of consideration matters which are relevant'. [Ref: 3 BLC, 78; 2 BLC, 57].

On scrutiny of the impugned letter we have no hesitation to hold that the Supreme Court administration in issuing the impugned letter having considered some extraneous and irrelevant facts has abused its discretionary power vested in it.

In this context we may profitably refer to the case of **K. VEERASWAMI Vs. Onion of India and others**, reported in (1991) 3 SCC, Page-655, wherein a question was raised whether the Judges of the High Court and the Supreme Court can be prosecuted on the charge of corruption.

In the said case while Mr. K. Veeraswami was serving as the Chief Justice of Madras High Court an FIR was lodged against him by CBI for allegedly committing offence under section 5(2) of the Prevention of Corruption Act, 1947 as he had failed to satisfy the possession of his assets which were far disproportionate to his know sources of income. Justice Veeraswami on coming to know about the said developments proceeded on leave and eventually retried on attaining the age of superannuation.

However, CBI continued the investigation and eventually submitted charge sheet against Justice Veeraswami under section 5(2) of the Prevention of Corruption, 1947. Thereafter, Justice Veeraswami moved before the Madras High Court for quashing the proceeding. But a full Bench of Madras High Court by a majority view dismissed his petition. However, High Court considering the importance of the constitutionality granted certificate for appeal to the Supreme Court of India. The Supreme Court by a majority view dismissed the appeal.

In the above case **BC Ray J.** has observed that;

> "It is farthest from our mind that a Judge of the Supreme Court or that of the High Court will be immune from prosecution for Criminal offences

committed during the tenure of his office under the provision of Prevention of Corruption Act."

K. Jagannatha Shetty J. has observed that:

"There are various protections afforded to Judges to preserve the independence of the judiciary. They have protection from civil liability for any act done or ordered to be done by them in discharge of their judicial duty whether or not such judicial duty is performed within the limits of their jurisdiction. That has been provided under section 1 of the Judicail Officers Protection Act,1850. . . . .

. . . . . .

But we know of no law providing protection for judges from criminal prosecution. Article 361(2) confers immunity from criminal prosecution only to the President and Governors of States and to no others. Even that immunity has been limited during their term of office. The judges are liable to be dealt with just the same way as any other person in respect of

criminal offence. It is only in taking of bribes or with regard to the offence of corruption the sanction for criminal prosecution is required. . . . . .

Before parting with the case, we may say a word more. This case has given us much concern. We gave our fullest consideration to the questions raised. We have examined and re-examined the questions before reaching the conclusion. We consider that the society's demand for honesty in a judge is exacting and absolute. The standards of judicial behavior, both on and off the bench, are normally extremely high. For a judge to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal. From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judges dishonor. A single dishonest judge not only dishonours himself and disgraces his office but

jeopardizes the integrity of the entire judicial system.

A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a judge must keep himself independence of the judiciary and to have the public confidence thereof." [Underlines supplied].

L.M. Sharma J. has held that;

"It is a well established principle that no person is above the law and even a constitutional amendment as contained in Article 329-A in the case of the Prime Minister was struck down in **Indira Nehru Gandhi V. Raj Narain.** It has to be remembered that in a proceeding under Article 124 a Judge can merely be removed from his office.

> He cannot be convicted and punished. Let us take a case where there is a positive finding recorded in such a proceeding that the judge was habitually accepting bribe, and on that ground he is removed from his office. On the argument of Mr. Sibal, the matter will have to be closed with his removal and he will escape the criminal liability and even the ill-gotten money would not be confiscated. Let us consider another situation where an abetter is found guilty under section 165-A of the Indian Penal Code and is convicted. The main culprit, the Judge, shall escape on the argument of the appellant. In a civilized society the law cannot be assumed to be leading to such disturbing results." [Underlines supplied]

In view of the above proposition the plea as mentioned in the impugned letter by our Supreme Court administration for not taking any steps against Respondent No.3 has no legs to stand.

The opinion in guise of direction expressed in the impugned letter was not the upshot of any

judicial determination. Such a mere administrative letter although issued as per the verbal instruction of the Hon'ble Chief Justice, patently impinges upon the rights and lawful authority of the Commission to go on with the inquiry into an allegation of corruption.

Accordingly, the commission is not bound by the opinion expressed in the impugned letter which was given in the form of direction by the Supreme Court administration. The Commission is under obligation to proceed with the matter in accordance with law.

We have given our anxious consideration to the submissions of the learned Advocates for the respective parties, the learned Attorney General and the Amice curiae(s), the relevant provisions of law as well the constitution, our jurisdiction and the facts of the present case.

Having considered the fact that despite issuing the impugned letter the Supreme Court administration has already provided necessary papers/documents to the Commission as sought for as well as the fact that the said Commission has been continuing with its inquiry against respondent No.3, we are impelled to dispose of the Rule with the following observations:

1) the impugned letter is amenable to judicial review as it was issued by the office of the

Appellate Division under its administrative capacity and therefore, the Rule is quiet maintainable;

2) in issuing the impugned letter the relevant authority has taken into consideration some extraneous and irrelevant facts and circumstances which has rendered the bonafides of the said authority in question;

3) the impugned letter is a mere official communication made by the office of the Appellate Division under its administrative capacity and in no way it can be regarded as the opinion of the Supreme Court;

4) the impugned letter has impaired as well as tarnished the image and dignity of the highest court of the country in the estimation of the public at large;

5) the impugned letter though tends to give a massage that a retired judge of the Supreme Court is immune from criminal prosecution but, in fact, no one is immune as such except the Hon'ble President and that too during his term of office;

6) the conduct of Commission in dealing with the inquiry process against Mr. Joynal Abedin, a retired judge of the Supreme Court is not at

all satisfactory for the simple reason that it has failed to complete the process during the last long 7(seven) years;

7) the relevant investigation agency or authority should be extra cautious and vigilant while conducting inquiry or investigation against a retired judge of the Supreme Court keeping in view the dignity and prestige of the judiciary as well as the fact that the scale of justice and people's confidence is reposed in it so that no one is subjected to unnecessary harassment and humiliation with any ulterior motive.

Accordingly, the Rule is disposed of.

However, there is no order as to costs.

Before parting with the case we express our gratitude to the learned Attorney General, the learned Amice Curiae(s) as well as the learned Advocates for the respective parties for their Valuable deliberations and support rendered to the Court.

Shahidul Karim,J.

I agree