

Present:
Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice Mohi Uddin Shamim
Writ Petition No. 1046 OF 2021.

IN THE MATTER OF:

An application under Article 102(2) (a) (i) and (ii)
of the Constitution of the People's Republic of
Bangladesh.

AND

IN THE MATTER OF:

Md. Ahsan Habib.

..... Petitioner.

-Versus-

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

...Respondents.

Mr. Murad Reza, Advocate with
Mr. Swapnil Bhattacharya, Advocate.

..... For the Petitioner.

Mr. A.K.M. Amin Uddin, D.A.G with
Mrs. Mahjabin Rabbani (Deepa), A.A.G
Mrs. Anna Khanom (Koli), A.A.G,

..... For the Respondents.

Mr. A.K.M. Fazlul Hoque, Advocate,

..... For the Anti-Corruption Commission.

Heard on: 01.03.2021 & 07.03.2021

Judgment on: 14.03.2021.

Md. Nazrul Islam Talukder, J:

On an application under Article 102 of the
Constitution of the People's Republic of Bangladesh,
this Rule Nisi, at the instance of the petitioner, was
issued calling upon the respondents to show cause as to

why the impugned Memo No. 28923 dated 21.07.2019 issued under signature of Respondent No.07 (**Annexure-E**), so far as it relates to the petitioner imposing embargo upon him to leave and re-enter into the country, shall not be declared without lawful authority and is of no legal effect and as to why the retention/seizure of the petitioner's Passport No. BY0288904 by the Officer-in-Charge (Immigration Police), Special Branch, Hazrat Shahjalal International Airport, Kurmitola, Dhaka, shall not be declared without lawful authority and is of no legal effect and/or pass such other or further order of orders as to this Court may seem fit and proper.

The impugned letter bearing Memo No. 28923 dated 21.07.2019 issued under signature of Respondent No. 07 (**Annexure-E**), which is under challenge is as under:-

দুর্নীতি দমন কমিশন

প্রধান কার্যালয়

১, সেগুনবাগিচা, ঢাকা।

[দুর্নীতি দমন কমিশন আইন-২০০৪; দুর্নীতি দমন বিধিমালা, ২০০৭ (সংশোধিত) এবং
ফৌজদারী কার্যবিধি-১৮৯৮ দ্রষ্টব্য]

স্মারক নং-২৮৯২৩

তারিখ-২১/০৭/২০১৯ খ্রি:।

বিষয় : অভিযোগ সংশ্লিষ্ট ব্যক্তির বিদেশ গমন রহিতকরণ প্রসঙ্গে।

সূত্র : দুদক, সজেকা, খুলনার মামলা নং-০২, তারিখ-০৯/০৭/২০১৯ খ্রি:।

উপর্যুক্ত বিষয় ও সূত্রের প্রেক্ষিতে জানানো যাচ্ছে যে, পরস্পর যোগসাজশে, আর্থিকভাবে লাভবান হওয়ার জন্য প্রতারণা, জাল-জালিয়াতি, অপরাধজনক বিশ্বাসভঙ্গ ও ক্ষমতার অপব্যবহারের মাধ্যমে সাতক্ষীরা সদর হাসপাতালের নিম্নবর্ণিত আসামীগণ দেশত্যাগ করে অন্য দেশে যাওয়ার চেষ্টা করছেন। সুষ্ঠু তদন্ত কার্যক্রম পরিচালনার নিমিত্ত নিম্নে উল্লিখিত আসামীগণের বিদেশ গমন রহিত করা আবশ্যিক।

আসামীগণের নাম, ঠিকানা ও পাসপোর্ট নম্বর :

ক্রমিক নং	নাম	পাসপোর্ট নম্বর
১.	মোঃ জাহের উদ্দিন সরকার (Md Jaher Uddin Sarkar), পিতা-মোঃ আব্দুস সাত্তার সরকার ২৫/১, ফ্ল্যাট নং-৫/বি, তোপখানা রোড, সেগুনবাগিচা, ঢাকা, স্থায়ী ঠিকানা: গ্রাম-হর গোবিন্দপুর, ডাকঘর-নন্দিগ্রাম, থানা- ফুলবাড়ী, জেলা-দিনাজপুর।	জাতীয় পরিচয়পত্র নং- ১৯৭২২৭২৬৪০৯১৮২৯৫৫, পাসপোর্ট নং- BM0981203, পূর্ববর্তী পাসপোর্ট নং- AA2009360
২.	আলহাজ্ব মোঃ আব্দুর ছাত্তার সরকার (Md Abdur Satter Sarkar), পিতা-মৃত ইমান সরকার, গ্রাম-হর গোবিন্দপুর, ডাকঘর-নন্দিগ্রাম, থানা- ফুলবাড়ী, জেলা-দিনাজপুর।	জাতীয় পরিচয়পত্র নং- ১৯৪৫২৭১৩৮২৮৭৬৪৪০১, পাসপোর্ট নং- BB0233544
৩.	মোঃ আহসান হাবিব, পিতা-মোঃ জাহের উদ্দিন সরকার, ২৫/১, ফ্ল্যাট নং-৫/বি, তোপখানা রোড, সেগুনবাগিচা, ঢাকা, স্থায়ী	জাতীয় পরিচয়পত্র নং- ১৯৯৯৩০৯০৫৫৬১২০৪৪৭, পাসপোর্ট নং- BY0288904

	ঠিকানা: গ্রাম-হর গোবিন্দপুর, ডাকঘর-নন্দিগ্রাম, থানা- ফুলবাড়ী, জেলা-দিনাজপুর।	
৪.	মোঃ আসাদুর রহমান, পিতা-মোঃ আব্দুল খবীর উদ্দিন, গ্রাম- আমড়া, ডাকঘর-মুরারীপুর, উপজেলা-ফুলবাড়ী, জেলা- দিনাজপুর।	জাতীয় পরিচয়পত্র নং- ১৯৮১২৭১৩৮৬৬৬৮৩৪৬০,
৫.	ডাঃ তওহীদুর রহমান, সাবেক সিভিল সার্জন, সাতক্ষীরা (বর্তমানে অবঃ), পিতা-মৃত তফছির উদ্দিন, বর্তমান ঠিকানা- বাড়ী নং- ১২/১৪ (৪র্থ তলা), রোড নং-৭, সেক্টর-১২, উত্তরা, ঢাকা, স্থায়ী ঠিকানা- গ্রাম ও ডাকঘর-প্রতাপনগর, থানা- আশাশুনি, জেলা-সাতক্ষীরা।	
৬.	এ কে এম ফজলুল হক, স্টোর কীপার, সিভিল সার্জন অফিস, সাতক্ষীরা, পিতা-মৃত আজিজুল হক, বর্তমান ঠিকানা-পশ্চিম পলাশপোল, ডাকঘর+থানা+জেলা-সাতক্ষীরা, স্থায়ী ঠিকানা- গ্রাম-ইছাকুড়, ডাকঘর- ভূরুলিয়া, উপজেলা- শ্যামনগর, জেলা-সাতক্ষীরা।	
৭.	মোঃ আনোয়ার হোসেন, হিসাবরক্ষক, সিভিল সার্জন অফিস, সাতক্ষীরা, পিতা-মৃত গোলাম হোসেন, বর্তমান ও স্থায়ী ঠিকানা- গ্রাম- রসুলপুর, উপজেলা ও জেলা- সাতক্ষীরা।	
৮.	কাজী আবু বকর সিদ্দীক, পিতা- আব্দুল মান্নান, গ্রাম-দক্ষিণ খাগছাড়া, ডাকঘর-মুর্শিদাবাদ, উপজেলা ও জেলা-মাদারীপুর, বর্তমান ঠিকানা-ল ৩২/১/এ	

	মেরলবাডা, ঢাকা।	
৯.	এ এইচ এম আব্দুস কুদ্দুস, সহকারী প্রকৌশলী (বর্তমানে-অবসর), নিমিউ এন্ড টিসি, মহাখালী, ঢাকা, পিতা-মৃত মাওলানা কেলামত আলী, গ্রাম-নিশ্চিতপুর, ডাকঘর-জিরাবো, আশুলিয়া, ঢাকা।	

এমতাবস্থায়, উল্লিখিত আসামীগণ যাতে বিদেশ গমন না করতে পারেন সে বিষয়ে প্রয়োজনীয় কার্যকর ব্যবস্থা গ্রহণের জন্য বিশেষভাবে অনুরোধ করা হল। উল্লেখ্য যে, ক্রমিক নং ৪ হতে ৯-এ বর্ণিত আসামীদের পরিচয়পত্র ও পাসপোর্ট নম্বর পাওয়া গেলে তাৎক্ষণিকভাবে অবহিত করা হবে।

মোঃ জাহাঙ্গীর আলম
উপপরিচালক
দুর্নীতি দমন কমিশন
প্রধান কার্যালয়, ঢাকা
ও
অনুসন্ধানকারী কর্মকর্তা
মোবাইল : ০১৫৩২২৬০৬৭০।
তারিখ-২১/০৭/২০১৯ খ্রি:।

বিশেষ পুলিশ সুপার (ইমিগ্রেশন)
স্পেশাল ব্রাঞ্চ
বাংলাদেশ পুলিশ, মালিবাগ, ঢাকা।
স্মারক নং-২৮৯২৩

অনুলিপি : সদয় প্রয়োজনীয় ব্যবস্থা গ্রহণার্থে প্রেরণ করা হলো :
১। পরিচালক (বি: অনু: ও তদন্ত-২), দুর্নীতি দমন কমিশন, প্রধান কার্যালয়, ঢাকা।
২। অফিস কপি।

মোঃ জাহাঙ্গীর আলম
উপপরিচালক
দুর্নীতি দমন কমিশন
প্রধান কার্যালয়, ঢাকা।

The facts necessary for disposal of this Rule, are that the petitioner is a student by profession. He has

finished his year 12 from Brentwood Secondary College, Australia. Presently he is studying Bachelor of Commerce at Deakin College under Deakin University, 221, Burwood, Highway, Burwood, Victoria-3125, Australia. The petitioner is a holder of Bangladeshi Passport bearing Passport No. BY0288904. On 19.12.2018, the previous Passport No. BA0260331 which was issued by the office of Respondent No.02 expired on 18.12.2023. The petitioner went to many countries of the world and duly returned to Bangladesh. The petitioner always used Bangladeshi Passport and neither he had ever surrendered his passport nor showed his allegiance to any country except Bangladesh. Suddenly, on 09.07.2019, the petitioner was implicated in connection with DUDOK Shozeka (Shomonnitto Zila Karjaloi), Khulna's Case No. 02 dated 09.07.2019 under Sections 409/420/467/468/471 of the Penal

Code read with Section 5(2) of the Prevention of Corruption Act, 1947. Subsequently, with an ulterior motive two cases have been lodged against the petitioner being (1) Dudok Shozeka (Shomonnitto Zila Karjaloi), Rangpur Case No. 05, dated 12.09.2019 (2) DUDOK Shozeka (Shomonnitto Zila Karjaloi), Khulna (Satkhira) Case No.09 dated 31.10.2019 for causing harassment to the petitioner. The petitioner has been studying in Australia since 2016. Lastly in 2018, he visited Bangladesh. On 26.11.2020 when he returned to Bangladesh from Australia, he was arrested in connection with Special Case No.25 of 2019 arising out of DUDOK ShoZeKa (Shomonnitto Zila Karjaloi), Khulna's Case No.02 dated 09.07.2019. Then the Officer-in-Charge (Immigration Police), Special Branch, Hazrat Shahjalal International Airport, Kurmitola, Dhaka seized his present Passport being Passport

No.BY0288904 and the previous Passport being Passport No.BA0260331 issued by Bangladesh Government and since then the said passports are in the Custody of Special Branch, Hazrat Shahjalal International Airport, Kurmitola, Dhaka. Thereafter, on 07.12.2020, the petitioner was enlarged on bail by the High Court Division in Criminal Miscellaneous Case No.32100 of 2020 in Special Case No.11 of 2019 arising out of DUDOK Shozeka (Shomonitto Zila Karjaloi), Rangpur Case No.05 dated 12.09.2019 under Sections 409/420/468/471/109 of Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947, now pending in the Court of the learned Special Judge, Special Court No.1, Rangpur and the Anti-Corruption Commission did not prefer by appeal against the aforesaid order of bail.

It is stated in the writ petition that the petitioner was enlarged on bail by the learned Special Judge,

Satkhira in Special Case No.25 of 2019 arising out of DUDOK Shozeka (Shomonnitto Zila Karjaloi), Khulna's Case No.02 dated 09.07.2019 and he was also enlarged on bail in Special Case No.28 of 2019 arising out of DUDOK Shozeka (Shomonnitto Zila Karjaloi), Khulna's (Satkhira) Case No.09 dated 31.10.2019. Though the learned Special Judge, Satkhira granted ad-interim bail to the petitioner in the above mentioned 2(two) cases and the Anti-Corruption Commission did not prefer appeals against the aforesaid orders of bail.

It is further stated in the writ petition that on 21.07.2019, the Respondent No.7 Mr. Md. Jhahangir Alam, Deputy Director of Anti-Corruption Commission, Head Office, Dhaka and Investigating Officer of the DUDOK Shozeka (Shomonnitto Zila Karjaloi), Khulna's Case No.02 dated 09.07.2019 (renumbered as special Case No.25 of 2019 now

pending in the Court of Senior Special Judge, Sathkhira) issued a letter vide Memo No.28923 dated 21.07.2019 to the Respondent No.04 mentioning the names of all the accused of the above mentioned case including the petitioner and imposed restriction upon them not to leave and re-enter the country in violation of their fundamental rights guaranteed under Articles 27, 36, 39 and 40 of the Constitution of the people's Republic of Bangladesh.

Being aggrieved by and dissatisfied with the Memo No. 28923 dated 21.07.2019 issued under signature of the Respondent No.07 (**Annexure-E**), the petitioner approached this court with an application under Article 102 of the Constitution of the People's Republic of Bangladesh and obtained this Rule.

At the very outset, Mr. Murad Reza, the learned Advocate along with Mr. Swapnil Bhattacharya, the learned Advocate appearing on behalf of the

petitioner, submits that there is no restriction from any court of law against the petitioner to leave the country; the Respondent No.07 issued the impugned embargo against the petitioner which is mala fide and colorable exercise of power without jurisdiction and the same is not tenable in the eye of the law and as such, the impugned memo is liable to be declared illegal, without lawful authority and is no legal effect.

He next submits that since no warrant of arrest is pending against the petitioner in any court of law, the embargo upon the petitioner debarring him from going abroad is clear violation of fundamental rights of the petitioner as guaranteed under Articles 27, 31, 32 and 36 of the Constitution of the People's Republic of Bangladesh and as such, the impugned memo is liable to be declared illegal, without lawful authority and is of no legal effect.

He then submits that the embargo is nothing but denial of the fundamental rights namely equality before law, equal protection of law, protection of right to life and personal liberty, freedom of movement and freedom of thought and conscience and speech as guaranteed under Articles 27, 31, 32, 36 and 39 of the Constitution of the People's Republic of Bangladesh and as such, the impugned memo is liable to be declared illegal, without lawful authority and is of no legal effect.

He further submits that the accused-petitioner is a student and he is studying in Australia and he is not any way involved in the alleged offence nor have any knowledge about the same; the accused-petitioner is a law abiding citizen of Bangladesh having all of his relatives and vested interests in the country and as such, the impugned memo is liable to be declared

illegal, without lawful authority and is of no legal effect.

He candidly submits that as per the legal decisions reported in 16BLC(AD)1, 18BLT(HCD)188 and 24BLT(HCD)154, no citizen of Bangladesh can be stopped from leaving and re-entering into Bangladesh without any order from any court of law and as such, the impugned embargo is without any lawful authority and is of no legal effect.

He categorically submits that Article 36 of the Constitution of the People's Republic of Bangladesh and Article 13 of the Universal Declaration of Human Rights, 1948 have firmly established the person's right to exit and re-enter into a country and without a clear order of any court of law amounting to reasonable restriction, such right cannot be taken away.

He lastly submits that the Respondent No.04 has illegally seized the petitioner's Passport No.

BY0288904 and previous Passport No.BA0260331 issued by Bangladesh Government which is violation of fundamental rights guaranteed under Article 36 of the Constitution and the rules of natural justice.

The learned Advocate for the petitioner, in support of his submissions, has referred to a number of legal decisions taken in the cases of Smt. Maneka Gandhi Vs Union of India and another, reported in AIR 1978 (SC) 597, Syed Abual A'ala Maududi Vs The State Bank of Pakistan and another, reported in PLD 1969 Lahore 908 and 17 DLR (SC) 209, Rafiqul-Ul-Huq Vs Bangladesh, reported in 44 DLR 398, para 11, 13 & 18, Syed Mokbul Hossain Vs Government of Bangladesh and others, reported in 44 DLR (1992) (HC)39, Hussain Mohammad Ershad Vs Bangladesh, reported in 21 BLD (AD) (2001)69, Ekram Ibrahim Vs Bangladesh reported in 47 DLR (1995)256, Mrs.

Dilruba Rana Vs Secretary, Ministry of Home Affairs and others, reported in 6 MLR(2001) (HC)50, Government of Bangladesh Vs Allama Delawar Hossain Sayedee and others, reported in 16 BLC (AD) (2011)1 and State Vs MM Rahmatullah, reported in 2 BLC (AD) (1997)157.

On the other hand, Mr. A.K.M. Fazlul Hoque, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that as per averments of the F.I.R, the petitioner is the joint owner of the company “M/S Mercantile Trade International” and since there are allegations against that company that without supplying any medical equipments, the company had submitted bills and the accused, in connivance with other accused persons (public servants), withdrew the bill-monies illegally and for these reasons, this petitioner cannot escape from the

liabilities; moreover, his alibi to the effect that “he has no connection regarding supplying equipments” is a factual issue and the same can be decided adducing evidence at the time of trial of the case.

He then submits that since the petitioner is accused of 3 criminal cases and being empowered under Sections 17, 19 and Section 20(3) of the Anti-Corruption Commission Act, 2004, his passport has been legally seized by the investigating officer, which cannot be said as arbitrary and illegal or the petitioner has nothing to be aggrieved thereby; and as the petitioner’s passport has been legally seized, bar to leaving Bangladesh is a de facto consequence and the writ petition is not maintainable to get back any article seized in criminal case; therefore, the Rule Nisi issued in the writ petition is liable to be discharged.

He next submits that the petitioner was not suddenly implicated in Dudok Shozeka Khulna's Case No.2 dated 09.07.2019, rather having found his involvement/his company's involvement with the commission of offence of misappropriation, cheating and forgery, allegations in the said case have been brought against him and others; and the petitioner's involvement is also found in other 2 cases and then allegations have been brought against him in those cases and as such, it cannot be said that the criminal cases have been filed with ulterior motive with a view to causing harassment to the petitioner.

He candidly submits that it is true that the petitioner was arrested in connection with Special Case No.25 of 2019 arising out of DUDOK Shozeka (Shomonnito Zila Karjaloi) Khulna's case No.02 dated 09.07.2019 and his passports were also seized in

connection with that case, but it is not true that the said passports are in custody of Special Branch, Hazrat Shahjalal International Airport, Kurmitola, Dhaka and since his passports are seized in connection with the said case, those will remain under custody of the Investigating Officer of the said case.

He further submits that since the petitioner's passport has been seized in a criminal case wherein he is an accused, his leaving and re-entering into Bangladesh is a de facto consequence and a writ petition is not maintainable for releasing the seized articles and the accused-petitioner cannot get any relief in writ jurisdiction while the matters involved are the matters of criminal proceedings.

He categorically submits that since the petitioner is an accused person of cognizable offences, the ACC/investigating officer has every right and authority

to arrest and to ask the government or any of its organs for aid of any kind as per Section 23(2) of the Anti-Corruption Commission Act, 2004 to arrest or to debar him from going abroad and accordingly the accused person was arrested and his passport was seized in connection with Dudok Shozeka Khulna's Case No. 02 dated 09.07.2019; hence the seizure of the document or passport of the petitioner by the Investigating officer of the Anti-Corruption Commission cannot be said as illegal seizure.

He vigorously submits that Article 36 of the Constitution and Article 13 of the Universal Declaration of Human Rights, 1948 did not debar the investigating officer of Anti-Corruption Commission from arresting a person/accused who committed cognizable offence/s or from seizing any document, thing or passport in connection with a criminal case.

He then submits that co-accused Md. Zaher Uddin Sarker was also debarred from leaving and entering into Bangladesh by the impugned memo but he filed and moved a writ petition before a Division Bench of this court which had actually no jurisdiction to hear any matter arising out of anti-corruption matters and that Division Bench passed an order dated 24.02.2020 allowing him to leave and re-enter Bangladesh in violation of Section 33(5) of the Anti-Corruption Act, 2004 without hearing or giving any opportunity of hearing to the Commission; hence the said order cannot be a precedent to be followed or can be taken into consideration.

He further submits that the petitioner has been arrested and his passport has been seized in connection with criminal cases and as such, Articles 27, 31, 32, 36, 39 and 40 of the Constitution are not applicable and the

petitioner's relief does not lie in writ jurisdiction, rather he will have to follow the provisions prescribed in the Code of Criminal Procedure to get back the seized articles.

He next submits that the decisions reported in 16BLC(AD)1, 18BLT(HCD)188 and 24 BLT(HCD)154 are distinguishable from the case of the petitioner as the passports of those petitioners were not seized in connection with the criminal cases unlike this petitioner; therefore, the said citations are not applicable in this writ petition and hence the Rule Nisi is liable to be discharged.

He lastly submits that to secure arrest of the accused petitioner, Anti-Corruption Commission has sought aid of the immigration authority and accordingly he was arrested and his passport was seized in connection with a criminal case, so the embargo

imposed upon the petitioner is a de facto consequence of seizure of his passport which is not barred by Articles 27, 36 and 40 of the Constitution; therefore, seizure of his passport in a criminal case cannot be declared illegal, without lawful authority and is of no legal effect in a writ jurisdiction and this Court should not interfere with the matters of criminal proceeding exercising the power of writ jurisdiction terming the “seizure of passport” as “retention of passport” and “impounding of passport”.

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General, appearing for the Respondent No.01 has adopted the submissions made by the learned Advocate for the ACC.

We have gone through the application under Article 102 of the Constitution of the People’s Republic of Bangladesh and perused the annexures annexed

therewith. We have also heard the learned Advocates for the petitioner, the learned Advocate appearing on behalf of the Anti-Corruption Commission and the learned Deputy Attorney-General appearing for the respondents.

It is stated in the writ petition that the writ petitioner is a 22 years old young man who studies in Australia having no connection with the business affairs of his father except being named only as co-proprietor of the business firms namely Mercantile Trade International as transpired from the First Information Report. It is further stated therein that the petitioner is an innocent young man whose whole educational future is in jeopardy due to confiscation/seizure of the passport and restriction imposed upon him by Anti-Corruption Commission. It is categorically stated in the writ petition that upon perusal of the impugned order, it

will transpire that nowhere in the impugned order, there is any direction and/or request made to the Immigration Authority to confiscate/impound/seize the passport of the petitioner. Moreover, it is stated that the Anti-Corruption Commission (in short ACC) has no authority under the Anti-Corruption Commission Act, 2004 to impound/confiscate/seize the passport of a citizen and any provision of the Anti-Corruption Commission Act, 2004 including Sections 17, 19 and 20 of the ACC Act, 2004 has not given any such power to ACC either to order any other law enforcing authority to confiscate/seize any citizen's passport or to do that by itself.

During hearing of the Rule, the learned Advocate for the petitioner has pointed out many grounds for setting aside the impugned memo in question. As per his first contention, no other authority except

Respondent No. 2, the Director General, Immigration and Passport has such authority under the Bangladesh Passport Order, 1973 to impound/revoke/seize passport of a citizen and justify the same and that ACC can neither order to do so or justify the same.

Secondly, it is pointed out by the learned Advocate for the petitioner that it is now established principle of law that one must be show caused and heard i.e. the Rule of Audi Alteram Partem (let the other side be heard as well) shall apply before one's passport is impounded/confiscated/revoked/seized. The learned Advocate for the writ petitioner in support of his contention has referred to a number of legal decisions taken in the cases of Smt. Maneka Gandhi Vs Union of India and another, reported in AIR 1978 (SC) 597, Syed Abual A'ala Maududi Vs The State Bank of Pakistan and another, reported in PLD 1969 Lahore 908

and 17 DLR (SC) 209, Rafiqul-Ul-Huq Vs Bangladesh, reported in 44 DLR 398, para 11, 13 & 18, Syed Mokbul Hossain Vs Government of Bangladesh and others, reported in 44 DLR (1992) (HC)39, Hussain Mohammad Ershad Vs Bangladesh, reported in 21 BLD (AD) (2001)69, wherein it was held that impounding of passport without giving the holder opportunity of being heard and without reasonable grounds is unlawful; Ekram Ibrahim Vs Bangladesh reported in 47 DLR (1995)256, Mrs. Dilruba Rana Vs Secretary, Ministry of Home Affairs and others, reported in 6 MLR(2001) (HC)50, wherein it was decided that revocation/seizure of passport without giving opportunity to show cause is unfair and unjust; Government of Bangladesh Vs Allama Delawar Hossain Sayedee and others, reported in 16 BLC (AD) (2011)1 and State Vs MM Rahmatullah, reported in 2 BLC (AD) (1997)157.

Thirdly, it is singled out on behalf of the writ petitioner that Article 36 of the Constitution has given specific right to a citizen “to leave and re-enter Bangladesh. This is a unique right, even the Indian and Pakistani Constitution do not include such right, and that restriction on movement has been decided as unreasonable if imposed for unlimited period of time and that the ACC by virtue of the impugned order not backed by any law purported to restrict the writ petitioner’s right to leave and re-enter into Bangladesh, which is illegal and not sustainable in the eye of law and that the ACC vide issuing the impugned order (Annexure-E) purported to impose restriction on the petitioner’s right to freedom of movement for an indefinite period of time, which is also illegal and without any lawful authority. The learned Advocate for the petitioner in support of his contention has referred

to a legal decisions taken in the cases of Smt. Maneka Gandhi Vs Union of India, reported in AIR 1978 (SC) 597; Sayed Abual A'ala Maududi Vs. The Government of West Pakistan, reported in 17 DLR (SC) 209 and PLD 1969 Lahore 908.

Fourthly, with reference to Articles 36, 39 and 40 of the Constitution of the Peoples' Republic of Bangladesh, it is clarified on behalf of the petitioner that in this matter ACC purports to withhold the petitioner's right to go abroad for his academic pursuits by issuing the impugned memo (**Annexure-E**) and/or deny his right to get his passport back.

Fifthly, it is highlighted on behalf of the petitioner that the apprehension of the Anti-Corruption Commission that the petitioner will abscond from the possible trial has no basis in the absence of any credible assertion and under the facts and circumstances of the

case. The learned Advocate in support of his argument has referred to a legal decision taken in the case of State Vs. M.M. Rahmatullah, 2 BLC (AD)157.

In reply to the submissions advanced by the learned Advocate for the petitioner, the main contentions of the Anti-Corruption Commission are as follows:-

Firstly, it is indicated on behalf of the Commission that to secure arrest of the accused petitioner, ACC has sought aid of the Immigration authority and accordingly he was arrested and his passport was seized in a criminal case, so the said embargo is a de facto consequence of seizure of his passport which is not barred by Articles 27, 36 and 39 of the Constitution. Therefore, seizure of his passport in a criminal case cannot be declared as without lawful authority and is of no legal effect in a writ jurisdiction.

Secondly, it is underlined on behalf of the Commission that since the petitioner is an accused person of cognizable offences, the investigating officer has every authority to ask the Government or any of its organs for aid of any kind as per section 23(2) of the ACC Act, 2004 and to arrest or detain him and accordingly the accused person was arrested and his passport was seized in connection with Dudok Shozeka Khulna's Case No. 02 dated 09.07.2019. So, any document or passport seized by the Investigating officer of the ACC or law enforcing agency at the instance of ACC cannot be said as illegal seizure.

Thirdly, it is pointed out by the Commission that the Anti-Corruption Commission has rightly seized the passport of the petitioner since he is involved/concerned in the cognizable offences and credible information with regard to the offences against

the petitioner has been received by the Commission and a reasonable suspicion exists of his having been so concerned.

On the face of submissions and counter-submissions of the respective parties, the following issues have arisen for discussion and decision.

The first issue is whether the Anti-Corruption Commission has any power and authority to issue the impugned memo with a view to debarring the petitioner from leaving the country during pendency of inquiry and/or investigation.

The second issue is whether the retention/seizure of the passport of the petitioner without showing cause and hearing is legal or not.

The third issue is whether the petitioner being a student and in view of the allegations brought against him is entitled to go abroad to continue his studies.

Before coming to a decision in this matter, let us know the power and function of the Anti-Corruption Commission with regard to inquiry, investigation, further investigation and arrest of a person and/or accused in a pending proceeding of inquiry and investigation.

In order to appreciate the same, it is worthwhile to quote the Sections 17, 19 and 20 of the Anti-Corruption Commission Act, 2004.

Section 17 of the Anti-Corruption Act, 2004 runs as follows:-

১৭। কমিশনের কার্যাবলি। কমিশন নিম্নবর্ণিত সকল বা যে কোন কার্য সম্পাদন করিতে পারিবে, যথা :

(ক) তফসিলে উল্লিখিত অপরাধসমূহের অনুসন্ধান ও তদন্ত পরিচালনা;

(খ) অনুচ্ছেদ (ক) এর অধীন অনুসন্ধান ও তদন্ত পরিচালনার ভিত্তিতে এই আইনের অধীন মামলা দায়ের ও পরিচালনা;

(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 বাংলাদেশে বিদ্যমান বিভিন্ন প্রকার দুর্নীতির উৎস চিহ্নিত করা এবং তদনুসারে প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;

(এ) 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 Anti-Corruption Commission Act, 2004 contemplates as under:-

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

(ক) সাক্ষীর প্রতি নোটিশ জারি ও উপস্থিতি নিশ্চিতকরণ এবং সাক্ষীকে জিজ্ঞাসাবাদ করা;

(খ) কোন দলিল উদঘাটন এবং উপস্থাপন করা;

(গ) সাক্ষ্য গ্রহণ;

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

(ঙ) সাক্ষীর জিজ্ঞাসাবাদ এবং দলিল পরীক্ষা করার জন্য নোটিশ 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 অনুরূপভাবে 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 দণ্ডনীয় অপরাধ হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনূর্ধ্ব ৩(তিন) বৎসর পর্যন্ত যে কোন মেয়াদের কারাদণ্ডে বা অর্থদণ্ডে বা উভয় প্রকার দণ্ডে দণ্ডনীয় হইবেন।

From the aforesaid provisions of law of the Anti-Corruption Commission Act, 2004, it is crystal clear that the Commission holds the power to make inquiry and investigation. It may be noted that the provision laid down in section 19(1)(Cha) is a residuary power given by the legislature to the Commission in order to achieve the purposes and objects of the enactment

which are evident from the preamble of the Anti-Corruption Commission Act, 2004.

Section 20 of the Anti-Corruption Commission Act, 2004 reads as under:-

২০। অনুসন্ধান বা তদন্তের ক্ষমতা। (১) ফৌজদারি কার্যবিধিতে যাহা কিছুই থাকুক না কেন, এই আইনের অধীন ও উহার তফসিলে বর্ণিত অপরাধসমূহ কেবলমাত্র কমিশন কর্তৃক অনুসন্ধানযোগ্য বা তদন্তযোগ্য হইবে।

(২) উপ-ধারা (১) এ উল্লিখিত অপরাধসমূহ অনুসন্ধান বা তদন্তের জন্য কমিশন, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, উহার অধঃস্তন কোন কর্মকর্তাকে ক্ষমতা প্রদান করিতে পারিবে।

(৩) উপ-ধারা (২) এর অধীন ক্ষমতাপ্রাপ্ত কর্মকর্তার, অপরাধ অনুসন্ধান বা তদন্তের বিষয়ে, থানার ভারপ্রাপ্ত একজন কর্মকর্তার ক্ষমতা থাকিবে।

(৪) উপ-ধারা (২) ও (৩) এর বিধান সত্ত্বেও, কমিশনারগণেরও এই আইনের অধীন অপরাধ অনুসন্ধান বা তদন্তের ক্ষমতা থাকিবে।

Section 20 of the Anti-Corruption Commission Act, 2004 reads as under:-

Section 20. Power of inquiry or investigation-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, the offences under this Act and specified in its Schedule shall be inquired into or investigated only by the Commission.

Sub-Section (3) of Section 20 reads that “An officer empowered under sub-section (2) shall have the power of an officer-in-charge of a police station in respect of inquiry or investigation of an offence.

On going through the Anti-Corruption Commission Act, 2004 and the Anti-Corruption Commission Rules, 2007, it is apparent that the investigation officer of the Commission shall enjoy and exercise the power of an officer-in-charge of a police station but the power and function of an officer-in-charge of a police station with regard to inquiry and investigation have not been outlined and stated therein.

It is now well-settled that the Anti-Corruption Commission Act, 2004 is a special law. Accordingly the provisions of the special law shall prevail over the general law but if the special law remain silent in respect of any procedures, in that case, the provisions of the Code of Criminal Procedure will come into play and will work as supplement to holding the inquiry and investigation into the allegations by the ACC.

In this regard, Rule 20 of the Anti-Corruption Commission Rules, 2007 may be quoted for convenience of discussions. Rule 20 of the Anti-Corruption Commission Rules, 2007 runs as follows:-

২০। অনুসন্ধান ও তদন্তকার্যে কমিশনের কর্মকর্তাদের অনুকূলে ক্ষমতা
অর্পণ।

(১) আইনের ধারা ১৯ এর উপ-ধারা (১) এ প্রদত্ত অনুসন্ধান বা
তদন্তকার্যে কমিশন বিশেষ ক্ষমতা প্রয়োগের ক্ষেত্রে যতদূর সম্ভব আইনের

সহিত সঙ্গতিপূর্ণ হওয়া সাপেক্ষে ফৌজদারী কার্যবিধির বিধানবলি অনুসরণ করিবে। যথাঃ-

(ক) শপথের ক্ষেত্রে Oaths Act, 1873 (Act X of 1873)

এর বিধানাবলী প্রযোজ্য হইবে; এবং

(খ) অন্যান্য সকল ক্ষেত্রে যতদূর সম্ভব আইনের সহিত অসঙ্গতিপূর্ণ না হইলে ফৌজদারী কার্যবিধির এর বিধানাবলী প্রযোজ্য হইবে।

From the aforesaid provision of the law, it is clear that the provision of the Code of Criminal Procedure shall be applicable so far they are not inconsistent with the provisions of the Anti-Corruption Commission Act, 2004 and the power and authority of an officer-in-charge of a police station under the Code of Criminal Procedure can be exercised by an officer of the Commission being appointed for the purpose of inquiry and investigation into the allegations.

It may be mentioned that the allegations have been brought against the petitioner under Sections

409/420/467/468/471/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947. The allegations that have been brought against the petitioner are the offences under the Penal Code but these offences have been included in the schedule to the Anti-Corruption Commission Act, 2004. Accordingly, the schedule offences would be inquired, investigated and tried under the provisions of the Anti-Corruption Commission Act, 2004 read with Rules of the Anti-Corruption Commission Rules, 2007 and the provisions of the Criminal Law Amendment Act, 1958. As per Section 28A of the Anti-Corruption Commission Act, 2004, the offences under the Anti-Corruption Commission Act, 2004 are cognizable offences. As per Section 4(f) of the Code of Criminal Procedure, “cognizable offence” means an offence for and “cognizable case” means a case in, which a Police-

officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant. Under Section 54 of the Code of Criminal Procedure, a Police Officer may, without an order from a Magistrate and without a warrant, arrest any person who has committed cognizable offences.

Section 54 of the Code of Criminal Procedure runs as follows:-

54. (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest-

firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which

excuse shall lie on such person, any implement of house breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Government;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh;

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made

or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

eightly, any released convict committing a breach of any rule made under section 565, sub-section (3);

ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might

lawfully be arrested without a warrant by the officer who issued the requisition.

It is worthwhile to mention that no specific power has been given to an investigating officer/ACC under the Anti-Corruption Commission Act, 2004 and the Anti-Corruption Commission Rules, 2007 to arrest an accused/any person of cognizable offences mentioned in the schedule to the Anti-Corruption Act, 2004 along with an offence punishable under section 5(2) of the Prevention of Corruption Act, 1947 save and except the offence under Section 27 of ACC Act, 2004 during pendency of inquiry and/or investigation into those allegations. For this reason, the provisions of the Code of Criminal Procedure will be applicable in view of sub-section (2) of section 5 of the Code of Criminal Procedure read with Rule 20(b) of the Anti-Corruption Commission Rules, 2007. Section 5(2) of the Code of

Criminal Procedure contemplates that if any local law or special law does not provide any provisions for investigation, inquiry, trial or otherwise dealing with the same, the provisions of the Code of Criminal Procedure shall be applicable, provided they are not inconsistent with the provisions of the Anti-Corruption Commission Act, 2004.

Section 5 of the Code of Criminal Procedure reads as under:-

Section 5(1) All offences under Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the

manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

It may be mentioned that the powers of an officer of the Commission to arrest any person/accused has been mentioned in section 21 of the ACC Act, 2004 which provides that in respect of an offence punishable under section 27 of the ACC Act, 2004, the officer with the prior approval of the Commission can arrest an offender and this power can be exercised even before lodging of any FIR. Section 27 relates to possession of property disproportionate to known sources of income of a person. Admittedly, the writ petitioner has not been charged with an offence punishable under section 27 of the ACC Act, 2004, rather allegations have been brought against the writ petitioner under Sections 409/420/467/468/471/109 read with Section 5(2) of the Prevention of Corruption Act, 1947.

As regards arrest of any person/accused in cognizable offences under Sections 409/420/467/468/471/109 read with Section 5(2) of the Prevention of Corruption Act, 1947 save and except the offence under Section 27 of the ACC Act, 2004, the Anti-Corruption Commission Act, 2004 is totally silent regarding the exercise of such power in respect of other schedule offences but at the same time, there is no prohibition either. We have stated earlier that in the absence of any specific provision and also in the absence of restriction or prohibition, section 5(2) read with section 1(2) of the Code of Criminal Procedure together with Rule 20(b) of the Anti-Corruption Commission Rules, 2007 will govern for determining the powers of an investigating officer or an officer of the Commission. In view of these provisions, there is no legal bar to exercise the powers by the investigating

officer/an officer of the Commission/Commission unlike the powers given to an Officer-in-Charge of a police station to arrest any person/accused in cognizable offences during pendency of inquiry/investigation of cognizable offences if they are satisfied from the materials collected that such step is necessary for the purpose of collecting more legal evidence in support of the charge or with a view to prevent him to commit such crime or that he has collected credible evidence of his being involved in the commission of a cognizable offence.

In the case of *Durnity Daman Commission Vs Abdullah-Al-Mamun and another*, reported in 21BLC(AD)(2016)162, it was held that the officer of the Commission has power to arrest an offender if he finds credible evidence for commission of a cognizable offence. It was further laid down therein that power can

be exercised by an officer of the Commission in course of an inquiry or investigation of a case against an accused person but in presence of specific provisions for inquiry in Chapter III of the Bidhimala of 2007 before holding investigation in respect of an offence against a person, an officer of the Commission or the investigation officer must be satisfied on the basis of such inquiry that credible evidence or materials have been collected against such accused person about his complicity in respect of the offence under inquiry or investigation to warrant his arrest.

Since the Anti-Corruption Commission holds power to arrest any person/accused of cognizable offences in pending inquiry and investigation and the petitioner is required to be present before the Commission for effective completion and disposal of the inquiry and/or investigation, the Commission in

exercise of its power under Section 23(2) of the ACC Act, 2004 may seek co-operation from the government or the concerned authority or organization under the government and they shall bound to co-operate with the Commission in the manner prescribed by general or special order of the Commission.

On perusal of the impugned memo, it appears that the authority of the Anti-Corruption Commission issued the request to the Officer-in-Charge (Immigration Police), Special Branch, Hazrat Shahjajal International Airport, Kurmitola, Dhaka to restrain the writ petitioner from going abroad. It is evident that the authority of the Commission in exercise of the power entrusted under the ACC Act, 2004 as well as under the provisions of the ACC Rules, 2007 issued the request to the Immigration Police to restrain the writ petitioner from going abroad as part of a fair investigation into the

allegations as he is concerned in the cognizable offences and credible information has been received against him, which under no circumstances intended to infringe the rights and privileges guaranteed under Article 36 of the Constitution. The contention of the learned Advocate for the petitioner in this regard appears to be an outright misleading, misconception and misinterpretation of the law and the procedure of the Commission. If any person/accused gets a chance to leave the country during pendency of inquiry or investigation into the allegations against him, then the entire process of inquiry and/or investigation would inevitably be shattered and hampered and thus the purpose, object and scheme of the provisions of the ACC Act, 2004 along with the provisions of the ACC Rules, 2007 in respect of inquiry and/or investigation into the allegations by the Commission as laid down

under Sections 17 and 19 of the ACC Act, 2004 as well as under the provisions enumerated under Part-III (Chapter 3) of the ACC Rules, 2007 may miserably be frustrated, inasmuch as the person/accused of cognizable offences would not be available for conducting a fair inquiry and/or investigation. So, the fact of the case does not have any nexus with the provisions of Article 36 of the Constitution.

Furthermore, Section 19 of the Anti-Corruption Commission Act, 2004 relates to special or extraordinary powers of the Commission in respect of enquiry and/or investigation. Section 19 of the ACC Act, 2004 provides the following powers in the matter of inquiry and/or investigation into the allegations, namely- (a) to issue notice to witness and ensure attendance thereof and to examine witnesses; (b) to detect and produce any documents; (c) to take evidence;

(d) to call any Public records or copy thereof from any Court or office; (e) to issue notice for examination of witnesses and documents; and (f) to do anything prescribed for carrying out the purposes of this Act. Under the circumstances, there is no illegality in passing the impugned memo of restraining order. Before lodging/recording a case, any activities/functions of the Anti-Corruption Commission arising out of inquiry and/or investigation are to be considered as administrative acts which cannot be brought or called for judicial scrutiny under Article 102 of the Constitution of the People's Republic of Bangladesh.

Under the aforesaid facts and circumstances of the case, we are of the view that the Anti-Corruption Commission and/or the inquiry officer and/or investigating officer during pendency of inquiry

and/or investigation can arrest any person and/or accused who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned. Moreover, the requirements of law with regard to presence and hearing of any person/accused of cognizable offence at the time of inquiry and/or investigation under Section 22 of ACC Act, 2004 and Rule 11 of ACC Rules, 2007 would be frustrated if they are allowed to go abroad.

In view of the above discussions, it cannot be said that the step taken by the ACC/an officer being empowered by the ACC/investigating officer requesting the concerned officer-in-charge, Immigration Police, Special Branch to take steps so that the petitioner and others could not leave the country frustrating the proceeding of inquiry and/or

investigation is illegal since they are concerned in cognizable offence and credible information has been received against them.

Now we want to discuss about the seizure of passport of the petitioner. It may be mentioned that the purpose and object of the Anti-Corruption Commission Act, 2004 is quite different than the purpose and object of the Bangladesh Passport Order, 1973. Accordingly, the provisions of the Bangladesh Passport Order, 1973 are not applicable to the matters arising out of the administrative action/order of the Commission under the Anti-Corruption Commission Act, 2004, which is evident from Section 2 Ka of the Anti-Corruption Commission Act, 2004 which suggests that notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall prevail. Section 17 of the Anti- Corruption Commission Act, 2004 indicates that

the Commission may hold inquiry/investigation into any allegation of corruption/schedule offences of the Act on its own motion or on an application made by an aggrieved person or any person on his behalf. The aforesaid statement of law has been affirmed in the cases of **Tarique Rahman Vs Government of Bangladesh reported in 63 DLR (AD) 18, Anti-Corruption Commission, Dhaka Vs Abdul Azim reported in 69 DLR (AD) 208 and Anti-Corruption Commission Vs Monjur Morshed Khan reported in 64 DLR(AD) 124.** Section 19(2) of the Anti-Corruption Commission Act, 2004 contemplates that the Commission may require any person to furnish any information regarding a matter of inquiry or investigation and the person so required shall be bound to furnish such information kept under his custody. Section 20 of the Anti-Corruption Commission Act, 2004 speaks to the effect that

notwithstanding anything contained in the Code of Criminal Procedure, the offences under this Act and specified in its schedule shall be inquired into or investigated only by the Commission. The Commission can proceed with the matter of inquiry/investigation into any allegation of corruption, bribery and money laundering independently if the elements of corruption and bribery are there. There is neither any constitutional nor any statutory or any legal bar to conduct an inquiry/investigation into any allegation of corruption/schedule offences of the Anti-Corruption Commission Act, 2004, by the Commission. As per Section 14 of the Money Laundering Protirodh Ain, 2012 read with Rule 18 of the Anti-Corruption Commission Rules, 2007, on the prayer of investigating officer of the Commission, and/or the Commission, the Senior Special Judge Court or the Court before which the case is pending

can pass an order for freezing the bank account and for attaching the properties remained within Bangladesh or outside Bangladesh which are acquired and obtained by committing the offence of corruption and money laundering or by the proceeds of corruption and money laundering. The passport of the petitioner was validly given to the petitioner by the concerned department of government under Article 7(2) of the Bangladesh Passport Order, 1973. It may be stated that passport is an official document issued by a government certifying the holders identity and citizenship and entitling them to travel under its protection to and from foreign countries. Admittedly, the passport of the petitioner is a valid document given by the government.

Article 36 of the Constitution of the People's Republic of Bangladesh reads that "Subject to any reasonable restrictions imposed by law in the public

interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.”

It is true that for the right guaranteed in Article 36 of the Constitution, a citizen can freely move throughout Bangladesh and to leave and re-inter Bangladesh, but that right is not an absolute one and is subject to reasonable restriction imposed by law. However, the government in the interest of sovereignty, integrity or security of Bangladesh or in the public interest can impound/revoke a passport of a citizen if it appears to it necessary to do it, but of course assigning reasons whatsoever in support of impounding/revoking the passport under the Bangladesh Passport Order, 1973 unless it is required to be done contrarily in different circumstances of emergency. Similarly the Commission can arrest

and/or seize the passport of a citizen if that person commits the schedule offences of the Anti-Corruption Commission Act, 2004 and if any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned.

Now we want to see and examine the language of the impugned memo for which the Anti-Corruption Commission requested the Officer-in-Charge (Immigration Police), Hazrat Shahjalal International Airport, Kurmitola, Dhaka to take steps so that the accused-persons could not leave the country frustrating the proceeding of inquiry and/or investigation started against them. It is stated in the impugned memo that “উপর্যুক্ত বিষয় ও সূত্রের প্রেক্ষিতে জানানো যাচ্ছে যে, পরস্পর যোগসাজশে, আর্থিকভাবে লাভবান হওয়ার জন্য প্রতারণা,

জাল-জালিয়াতি, অপরাধজনক বিশ্বাসভঙ্গ ও ক্ষমতার অপব্যবহারের মাধ্যমে সাতক্ষীরা সদর হাসপাতালের নিম্নবর্ণিত আসামীগণ দেশত্যাগ করে অন্য দেশে যাওয়ার চেষ্টা করছেন। সুষ্ঠু তদন্ত কার্যক্রম পরিচালনার নিমিত্ত নিম্নে উল্লিখিত আসামীগণের বিদেশ গমন রহিত করা আবশ্যিক।”

From the aforesaid language of the impugned memo, it is clear that the Respondent No. 7 issued the impugned memo having satisfied with the information to the effect that the petitioner and others are concerned in the cognizable offences, an FIR has been lodged against him and others and credible information has been received against them and a reasonable suspicion exists of their having been so concerned. We have stated earlier that if any person/accused of cognizable offences gets a chance to leave the country during pendency of inquiry and/or investigation into the allegations against him/them, then the entire process of inquiry and/or investigation would inevitably be shattered and hampered, and thus the

purpose, object and scheme of the provisions of the ACC Act, 2004 along with the provisions of the ACC Rules, 2007 in respect of the inquiry and/or investigation into the allegations by the Commission as laid down under Section 19 of the ACC Act, 2004 as well as under the provisions enumerated under Part-III (Chapter 3) of the ACC Rules, 2007 may miserably be frustrated, inasmuch as the person/accused of cognizable offences may not be available for conducting a fair inquiry and/or investigation. So, the fact of the case does not have any nexus with the provisions of Article 36 of the Constitution.

Now a question has been raised by the learned Advocate for the petitioner that the passport of the petitioner has been seized/impounded by the Officer-in-charge (Immigration Police) and/or the Commission as the case may be but the seizure of the passport is illegal and without lawful authority since no show cause notice was issued upon the petitioner and he was not heard

before seizing/impounding the passport of the petitioner which have violated the Rule of Audi Alteram Partem and the restriction imposed on the movement of the petitioner is unreasonable as the same has been imposed for an unlimited period of time. Rule 16 of the Anti-Corruption Commission Rules, 2007 provides that with a view to preventing corruption, an officer empowered by the Commission, for the purpose of catching hold red handed any person or persons connected with the offence specified in the schedule of the ACC Act, 2004 with prior approval of the Commissioner in charge of investigation can lay the trap and conduct the trap operation and no one else. Apart from this, in an emergency situation, an officer being empowered by the Commission can lay trap and catch hold red handed any person who is involved in cognizable offences without taking prior permission of the Commissioner in charge of investigation. This power of arrest may be exercised by an officer of the Commission even before

lodging the FIR. Under the circumstances, would this arrest without the permission of Commissioner in charge of investigation be illegal if the offender is caught red handed by laying trap? The answer of the question is certainly 'No'. But in order to make this arrest lawful, post-arrest approval is required from the concerned authority of the Commission. Similarly if the passport of any person/accused of cognizable offences is seized/impounded by the investigating officer or by the Commission showing emergency reasons, retention/seizure of the passport of those persons by the Commission or by the investigating officer during pendency of inquiry and/or investigation cannot be held illegal.

In the Oxford Advanced Learner's Dictionary, "Emergency" means a sudden serious and dangerous event or situation which needs immediate action to deal with it.

In the Wharton's Law Lexicon, "Emergency" means a situation which is not normal, a situation which calls for urgent remedial action.

Since the petitioner is an accused person of cognizable offences, the investigating officer has every right and authority to arrest him and to ask the government or any of its organs for aid of any kind as per Section 23(2) of the Anti-Corruption Commission Act, 2004 to arrest or debar him from leaving the country. Following this provision, the petitioner was arrested and his passport was seized in connection with Dudok, Shozeka, Khulna's Case No. 02 dated 09.07.2019. The Respondent No. 7 following Section 23(2) of the Anti-Corruption Commission Act, 2004 requested officer-in-charge, Immigration Police to take steps so that the writ petitioner and others could not go abroad during pendency of the investigation of the case.

If before arresting any person and/or accused of cognizable offences, notice is served upon them and the

Rule of Audi Alteram Partem are adhered to, in that case, there is every chance and possibility that the person and/or accused of cognizable offences will flee from the country in spite of the fact that they are concerned in cognizable offences and credible information has been received against them.

Our bitter experience is that despite the court's order, many accused left the country ignoring/violating the court's order and they could not be brought to justice later on notwithstanding the repeated efforts in different manner.

It will not be out of place to mention that corruption has engulfed our society to a great extent. To remove or to combat the corruption is a great challenge in our country. Corruption has many forms. With the change of time and circumstances, the perpetrators, in the meantime, have developed many skills for commission of corruption. Corruption is abuse of entrusted power for private or personal gain. It

undermines the economic development of the country and the State security as well. It takes place at the highest levels as well as at the lower levels of the society. Normally grand corruption takes place at the highest levels of the society while the petty corruption takes places at the lower levels of the society. So in order to uproot the corruption from the society, concerted efforts and mutual assistance and cooperation among the stakeholders are greatly needed.

Anyway, in view of the facts and circumstances of the matter at hands, post decisional hearing is needed to cure the irregularities if any in the impugned memo. Post decisional hearing is a hearing which takes place after a provisional decision is taken. This principle was laid down in the case of Smt. Maneka Gandhi Vs Union of India reported in AIR 1978 Supreme Court 597. There is a nexus between pre-decisional and post-decisional hearing. The logic behind introducing the post-decisional hearing is to increase and maintain

administrative fairness. Post decisional hearing takes place where it may not be feasible to hold pre decisional hearing. One better example is that the power to impound the passport may be frustrated if a prior notice or hearing is given to the concerned person whose passport is going to be impounded/seized because he can leave the country. Therefore, the passport authorities first impound the passport of that person without any hearing and later provide him opportunity of hearing. This was the scenario of Smt. Maneka Gandhi Vs Union of India in which it was held that the action of impounding passport without giving her pre decisional hearing was bad and the government was not justified in its act of impounding of the passport. But the act of the government was made justified by applying the concept of post decisional hearing in that case.

Along these lines, if the rule of Audi Alteram Partem could not be followed for any reasons, in that

case, as soon as order is made, a fair opportunity of being heard should be provided to the person in order to follow the aforementioned rule. This post decisional hearing cannot be treated as substitute of pre decisional hearing save and except the case of emergency nature.

Mr. Mahmudul Islam, in chapter two of his book “Constitutional Law of Bangladesh”, has stated that a restriction will be unreasonable in its procedural aspect if there is no provision for complying with the principles of natural justice. There may be a situation where it may not be possible to give notice and hearing to the aggrieved party, but in all such cases there must be a way of hearing the aggrieved party after the action is taken so that he may have an opportunity of showing that the exercise of the power in his case was unwarranted or arbitrary. If there is no safeguard against arbitrary exercise of power, the restriction imposed by law will be treated as unreasonable.

It is true that in the instant case at hand the passport of the petitioner was seized by the Commission with a view to preventing him from going abroad so that he could not frustrate the proceeding of investigation as he is very much required to be present at the time of investigation of the case as per Section 22 of the Anti-Corruption Commission Act read with Rule 11 of the Anti-Corruption Commission Rules, 2007 and he is concerned in the cognizable offence and credible information has been received against him. It is true that there is no provision for seizure of the passport in the Code of Criminal Procedure and in the Anti-Corruption Commission Act, 2004. It appears from Rule 18 of the Anti-Corruption Commission Rules, 2007 and Section 14 of the Money Laundering Protirodh Ain, 2012 that the properties acquired by illegal earnings by any person/accused may be attached and frozen following the application filed by the Anti-Corruption

Commission when there is an apprehension to the effect that the person/accused of cognizable offences may transfer the properties in question to anybody else. We deeply feel that there must be some provisions for seizure of the passport of the person accused of cognizable offences. Under the present circumstances of the case, we are of the view that as soon as the passport of a person/accused of cognizable offences is seized by the Commission, it is the first and foremost duty of the Commission to submit an application before the court concerned for approval of their order/actions. Then the concerned court having received the application from the Commission may notify the person/accused of cognizable offences and upon hearing the parties may pass necessary order approving or disapproving the order/memo of the Commission or the investigating officer. It is our considered view that the seizure of

the passport of the petitioner without giving the holder an opportunity of being heard and without reasonable grounds cannot remain undecided for an unlimited/indefinite period of time. Any irregularity in seizing the passport of the petitioner can be corrected by taking post-approval from the court having jurisdiction to do the same. Under the circumstances, we have no hesitation to say that seizure of passport of the petitioner before obtaining permission or approval from the court does not ipso facto make it illegal if the same is done to meet up the emergency situations with a view to fulfilling the purpose and object of the Anti-Corruption Commission Act, 2004.

It may be noted that the retention/seizure of the passport of the petitioner by the Commission or by the Investigating Officer during pendency of the inquiry and/or investigation cannot remain pending and

undecided for an unlimited/indefinite period of time. Rule 7 of the Anti-Corruption Commission Rules, 2007 indicates that the inquiry officer shall submit inquiry report before the inquiry controlling officer within 75(45+30+-----) days upon holding inquiry into the allegations. Further Section 20A of the Anti-Corruption Commission Act, 2004 stipulates that the Investigating Officer shall complete the investigation of offences specified in this Act and the Schedule within 270 (180+90+-----) days from the date of being empowered under Section 20 of the Anti-Corruption Commission Act, 2004.

Under the aforesaid facts and circumstances of the case, for some irregularities, the seizure of the petitioner's passport by the concerned respondents does not appear to be violative of Article 36 of the Constitution.

Anyway, immediately after seizure of the passport, the Commission, by submitting an application before the concerned court, may have scope to cure the irregularities if any occurred in the impugned memo through post-decisional hearing and post-approval from the court.

From the First Information Report, it appears that in order to purchase medical equipments for a Health Complex under Satkhira Sadar Hospital sent a list to the Chief Technical Manager, নিমিউ এন্ড টিসি, মহাখালী, ঢাকা at the instance of FIR named accused No. 1 Dr. Towhidur Rahman. Thereafter the accused No. 9 A.H.M Abdul Kuddus without taking any approval from the concerned authority submitted whimsical rate of the medical equipments without making any verification on the price of the medical equipments. In spite of having no necessity of the medical equipments, the FIR named accused including the

writ petitioner in collaboration with each other floated tender. The accuse No. 4 Md. Jaher Uddin Sarker being proprietor of his three business establishments submitted bids in response to the tender. During inquiry it is found that the trade license of Mercantile Trade International stands in the name of FIR named accused No. 4 Md. Jaher Uddin Sarker and FIR named accused No. 6, that is, the present writ petitioner. It is alleged in the FIR that the FIR named accused in collaboration with each other on the basis of fake rates and work orders misappropriated in total Tk. 16,61,31,827/- without supplying the medical equipments to the concerned authority. By this way, all the accused abusing their power and authority resorting to forgery and deception misappropriated the aforesaid amount of money. Hence an FIR was lodged against the writ petitioner and others under Sections 409/420/467/468/471/109 of the Penal Code

read with Section 5(2) of the prevention of Corruption Act, 1947.

It is evident from Annexure-E to the writ petition that co-accused Md. Jaher Uddin Sarker, the father of the present petitioner challenging the self-same impugned memo filed writ petition No. 2328 of 2020. It appears therefrom that a Division of Bench of this court by an order dated 24.02.2020 issued a Rule and passed an ad-interim order directing the respondents to allow the petitioner to leave and re-enter Bangladesh as and when necessary without any hindrance for a period of 6 (six) months from date. It is argued on behalf of the Anti-Corruption Commission that the Division Bench which passed the order had no jurisdiction to hear and pass any order on any matter arising out of anti-corruption matters. Moreover that order was passed without hearing or giving any opportunity of hearing to the

Commission as per Section 33(5) of the Anti-Corruption Commission Act, 2004. So that order cannot be taken into consideration as a precedent. Anyway the learned Advocate for the Anti-Corruption Commission could not submit any scrap of paper to show that the order of the High Court Division was stayed by the Appellate Division.

In the writ petition, it is categorically stated that the writ petitioner is a 22 years old young man who studies in Australia having no connection with the business affairs of his father except being named only as co-proprietor of the business firms namely Mercantile Trade International as transpired from the First Information Report. It is further stated therein that the petitioner is a student whose whole educational future is in jeopardy due to confiscation/seizure of the passport and restriction imposed upon him by the Anti-Corruption

Commission. Furthermore, the allegation brought against the petitioner is not grave in nature. His name only stands in the trade license of Mercantile Trade International.

Mr. Mahmudul Islam, in chapter two of his book “Constitutional Law of Bangladesh”, has stated that the right to go abroad cannot be said to be included in the freedom of expression or of profession, but an order denying the right to go abroad to a person by refusing him passport may contravene either Art. 39 or Art. 40 if such a person seeks to go abroad for academic pursuits or to carry on a profession.

Considering all the aspects of the case, the writ petitioner may get back his passport and pursue his studies going abroad.

Having considered all the facts and circumstances and overall situations of this matter,

this court having rule making powers is formulating the following guidelines:-

1. That if any person/accused of the schedule offences of the Anti-Corruption Commission Act, 2004 during pendency of inquiry and/or investigating is debarred from leaving the country and the passport is impounded/seized in an emergency situation without showing cause and hearing, the Anti-Corruption Commission and/or the investigating officer shall submit an application before the court of Senior Special Judge/Special Judge for post-approval of the memo of the restraining order and the act of the seizure of the passport as early as possible preferably within 15(fifteen) days from the date of passing the impugned memo as well

as from the date of seizing the passport as the case may be.

2. That the Senior Special Judge/Special Judge having received the application from the Commission if any shall notify the person/accused of cognizable offences and upon hearing the parties may pass necessary order approving or disapproving the memo of restraining order and act of seizure of the passport.
3. That the learned Special Judge will hear and dispose of the application of the Commission if any as early as possible preferably within 60 (sixty) days from the date of receipt of such application providing a fair opportunity of being heard to the aggrieved parties/persons.

4. The aggrieved person/accused shall submit his address, mobile phone and e-mail number to the Commission so that the Commission can communicate with them for any assistance and co-operation if required for the purposes of inquiry and/or investigation and they may appear before the Commission following the reasonable timeframe given by the Commission.
5. The aggrieved person/accused shall appear before the Commission if asked for to appear before it on the stipulated date fixed by the Commission failing which the matter will be dealt with in accordance with law.

Considering the aforesaid facts and circumstances of the case and the submissions made by the learned Advocates for the respective parties,

the Rule is disposed of in the light of aforesaid observations, guidelines and directions.

In consequence thereof, the impugned memo so far as it relates to the writ petitioner is modified accordingly.

The respondents with whom the passport of the petitioner is lying are directed to return the passport to the petitioner so that he can continue his studies going abroad and the respondents are also directed to allow the petitioner to go abroad without any hindrance.

Communicate the judgment and order to the learned Judge of the concerned court below and to the respondents at once.

Mohi Uddin Shamim J

I agree.

