

**17 SCOB [2023] HCD 108****HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)****WRIT PETITION NO. 2904 OF 2020.****Mohammad Mominul Islam****.....Petitioner****Vs.****Government of Bangladesh represented  
by the Secretary, Ministry of Civil  
Aviation and Tourism, Bangladesh and  
others****.....Respondents**

Mrs. Nahid Sultana Jenny, Advocates

.....For the Petitioner

Mr. Mehedi Hasan Chowdhury, Additional  
Attorney General with

Mr. Nawroz Md. Rasel Chowdhury, DAG

Mr. MMG Sarwar (Payel) and

Ms. Yeshita Parvin, AAGs

....For the respondent No.1

Mr. Probir Neogi, Senior Advocate with

Mr. Md. Ekramul Haque, Advocate

....For the respondent Nos.2-3

Mr. Salah Uddin Dolon, Senior Advocate  
with

Mr. Muhammad Mizanur Rahaman and

Heard on: 02.02.2022 and 09.02.2022,  
16.02.2022 and 06.03.2022

Judgment on: 06.04.2022.

**Present:****Mr. Justice Zafar Ahmed****And****Ms. Justice Kazi Zinat Hoque****Editors' Note:**

**In the instant case the petitioner challenged his retirement from service by the CEO of Biman Bangladesh Airlines Ltd on the ground of malafide. The respondent argued that the CEO and Managing Director has the power and authority to pass the order of retirement and the allegation of malafide is baseless. Further submission of the respondent was that illustration (e) to Section 114 of the Evidence Act presumes that official acts are done rightly and regularly in accordance with law and the petitioner failed to rebut the presumption contained in illustration (e). The High Court Division, however, analyzing applicable laws and examining materials on record found that for retiring any person from office a resolution from board of directors of Biman Bangladesh Airlines is required and without having such board resolution and delegated authority the order of the CEO was without jurisdiction, arbitrary and malafide.**

**Key Words:**

Rule 5(Ka) of “বাংলাদেশ বিমান কর্পোরেশন কর্মচারী (অবসরভাতা ও আনুতোমিক) বিধিমালা, ১৯৮৮; Bangladesh Biman Corporation Ordinance, 1977; principle of approbation and reprobation; Section 114 of the Evidence Act, 1872

**Bangladesh Biman Corporation Ordinance, 1977:**

**Bangladesh Biman Corporation was dissolved on 22.07.2007. Biman Bangladesh Airlines Ltd. was registered as public company on 23.07.2007. The entire undertaking of**

the Corporation has been transferred to and vested in the Company. However, the Ordinance, 1977 is still effective subject to subsequent developments done pursuant to Section 28A of the Ordinance. (Para 17)

**Articles of Association are to be followed mandatorily if they are not in conflict with the company law:**

It is settled principle of law that memorandum and articles of association being the constitution of the company regulate the affairs of the company including the powers of the board of directors and others and thus, articles are mandatory to be followed if they are not in conflict with the company law. (Para 26)

**Without reference of the decision of the Board of Directors, note mentioning the consent of the board is an after thought act and was created to justify the malafide action of the Managing Director and CEO of the Biman:**

It appears from the above that in note No. 15 dated 25.02.2020 the approval/decision/resolution of the board was not mentioned, but surprisingly in note No. 13 dated 25.02.2020 of a separate Nothi it is stated that the board had given consent to retiring the petitioner with benefit. It further appears from note No. 12 of the same note sheets that those were placed before the Managing Director and CEO on 25.02.2020. The impugned order was issued on 25.02.2020. So, when did the board of directors decide the matter and gave consent to the same? Is it on 25.02.2020? What is the number of the board meeting? Where are the minutes of the meeting? The respondents could not give any answer to these questions. No decision of the board was placed before us. We have examined the personal file of the petitioner and the connected file provided by the Biman. We have not found any decision of the board. Mr. Dolon submits that Note No. 13 is after thought and was created to justify the malafide action of the Managing Director and CEO of the Biman. The impugned order does not mention any decision of the Board of directors of the Biman, whereas, it is already noted that in the matter of removal from the service, the Biman follows article 59(b) of its articles of association and in the respective office orders reference of the decision of the board is mentioned. In the circumstances, the respondents are not allowed to rely on the case of *Md. Yousuf Haroon* on the basis of the principle of approbation and reprobation. (Para 36, 37)

**Presumption of regularity of the official acts and burden of proof in such cases:**

In judicial review of administrative actions, the Court has to start with the presumption of regularity of the official acts which is incorporated in illustration (e) to Section 114 of the Evidence Act. The burden of proof is on the party who alleges the contrary. In the present case, the petitioner has successfully rebutted the presumption. The case of *Shinepukur Holdings Ltd.*, 50 DLR (AD) 189 is of no assistance to the respondents. (Para 38)

**In absence of delegated authority and without any decision of the board of directors the Managing Director and CEO of the Biman has no power to retire anyone from service:**

In the case in hand, the Managing Director and CEO of the Biman issued the impugned order retiring the petitioner from service without any decision of the board of directors. No power was delegated to him to take the decision. Therefore, he was not competent authority to retire the petitioner. For this reason coupled with the attending facts and circumstances of the case, the unauthorised exercise of power by the Managing Director and CEO of the Biman is also without jurisdiction, arbitrary and malafide. Accordingly, we find merit in the Rule. (Para 40)

## JUDGMENT

### Zafar Ahmed, J:

1. This Court on 02.03.2020 issued a Rule Nisi calling upon the respondents to show cause as to why the order issued under Nothi No. 30.34.0000.068.02.056.20.311 dated 25.02.2020 by the respondent No. 3 Managing Director and CEO, Biman Bangladesh Airlines Ltd. (Annexure P) giving retirement to the petitioner under rule 5(Ka) of “বাংলাদেশ বিমান কর্পোরেশন কর্মচারী (অবসরভাতা ও আনুতোষিক) বিধিমালা, ১৯৮৮” should not be declared to have been issued without lawful authority and is of no legal effect and as to why the respondents should not be directed to reinstate the petitioner in the post of Director of Biman Bangladesh Airlines Ltd. and allow him to continue in service till the age of 59 years.

2. At the time of issuance of the Rule, this Court directed the respondent Biman Bangladesh Airlines Ltd. (in short, the ‘Biman’) to bring the personal file of the petitioner along with the connected file on the basis of which the impugned order was passed for perusal of this Court. The respondents were further directed to maintain status quo in respect of appointment to the post held by the petitioner.

3. The respondent No. 1 (Ministry of Civil Aviation and Tourism) entered appearance in the Rule, but did not file any affidavit-in-opposition.

4. The respondent Nos. 2 and 3, namely Biman Bangladesh Airlines Ltd. and the Managing Director and CEO of the Biman jointly entered appearance in the Rule and filed two sets of affidavit-in-opposition. They also brought the personal file of the petitioner and the connected file as per order of this Court.

5. The petitioner also filed a supplementary affidavit and affidavit-in-reply.

6. The petitioner joined in the service of the then Biman Bangladesh Airlines as Junior Security Officer on 03.11.1986. His service was confirmed on 10.05.1987. Eventually, he was promoted to the post of Executive Director of the Biman on 19.04.2017 and was posted as Director (Administration). He was given additional responsibility of Director (Procurement and Logistic Support) for the period from 02.07.2017 to 19.09.2018. While the petitioner was discharging his responsibilities as Director of the Biman, the respondent No. 3 (Managing Director and CEO of Biman) issued the order dated 25.02.2020 retiring him from service under rule 5(Ka) of “বাংলাদেশ বিমান কর্পোরেশন কর্মচারী (অবসরভাতা ও আনুতোষিক) বিধিমালা, ১৯৮৮” (Bangladesh Biman Corporation Employees (Pension and Gratuity) Rules, 1988) (hereinafter referred to as ‘Rules, 1988’) after completion of 25 years of service (Annexure-P) which is the subject matter of the Rule.

7. The relevant portion of the impugned order is quoted below:

নম্বর: ৩০.৩৪.০০০০.০৬৮.০২.০৫৬.২০.৩১১

তারিখ: ২৫ ফেব্রুয়ারি ২০২০

### আদেশ

যেহেতু, বিমান বাংলাদেশ এয়ারলাইন্স লিমিটেড এর পরিচালক জনাব মোহাম্মদ মমিনুল ইসলাম (পি-৩৩৭৪০) গত ০৩ নভেম্বর ১৯৮৬ তারিখে জুনিয়র সিকিউরিটি অফিসার হিসাবে চাকুরিতে যোগদান করেন এবং ইতোমধ্যে তার চাকুরিকাল ২৫ (পঁচিশ) বছর পূর্ণ হয়েছে; এবং ০২। যেহেতু, বিমান বাংলাদেশ এয়ারলাইন্স লিমিটেড এর স্বার্থে তাঁকে চাকুরি থেকে অবসর প্রদান করা প্রয়োজন;

- ০৩। সেহেতু, বিমান বাংলাদেশ এয়ারলাইন্স লিমিটেড কর্তৃক গৃহীত ও “অনুসৃত বাংলাদেশ বিমান কর্পোরেশন কর্মচারী (অবসরভাতা ও আনুতোষিক) বিধিমালা, ১৯৮৮” এর বিধি ৫(ক) অনুযায়ী তাকে বিমান বাংলাদেশ এয়ারলাইন্স লিমিটেড এর চাকরি হতে অবসর প্রদান করা হলো।
- ০৪। তিনি বিধি মোতাবেক অবসরজনিত সুবিধাদি প্রাপ্য হবেন।
- ০৫। জনস্বার্থে জারিকৃত এই আদেশ অবিলম্বে কার্যকর হবে।

(মোঃ মোকাম্মির হোসেন)  
ব্যবস্থাপনা পরিচালক ও সিইও  
বিমান বাংলাদেশ এয়ারলাইন্স লিমিটেড  
তারিখ: ২৫ ফেব্রুয়ারি ২০২০

8. Mr. Md. Salahuddin Dolon, the learned Senior Advocate of the petitioner, assails the impugned order on two grounds: firstly, the Managing Director and CEO of the Biman had no authority to give retirement to the petitioner under rule 5(Ka) of Rules, 1988, only the Board of Directors of the Biman preserves such power, and secondly, the order of retirement was malafide. In support of the argument, Mr. Dolon refers to various provisions of the relevant statutory laws, rules and the Articles of Association of the Biman and materials on record.

9. Mr. Probir Neogi, the learned Senior Advocate appearing with Mr. Md. Ekramul Hoque the learned Advocate of the respondent Biman and its Managing Director and CEO, refers to the cases of *Bangladesh Biman Corporation and others vs. Md. Yousuf Haroon and others*, 10 BLT (AD) 22= 54 DLR (AD) 161 and *Bangladesh Biman Airlines Limited vs. Captain Mir Mazharul Huq and others*, 70 DLR (AD) 16 and submits that the Managing Director has the power and authority to pass the order of retirement. Mr. Neogi further submits that the allegation of malafide is baseless and is not supported by any materials. Mr. Neogi also refers to illustration (e) to Section 114 of the Evidence Act, 1872 and *Shinepukur Holdings Ltd. and others vs. Securities and Exchange Commission and another*, 50 DLR (AD) 189 and submits that illustration (e) to Section 114 presumes that official acts are done rightly and regularly in accordance with law. Mr. Neogi submits that in the instant case, the petitioner failed to rebut the presumption contained in illustration (e).

10. Mr. Md. Mehedi Hasan Chowdhury, the learned Additional Attorney General appearing for the respondent No. 1, adopts the arguments of Mr. Neogi.

11. A brief discussion of the history of the inception of the Biman as a statutory body under the nomenclature “Bangladesh Biman Corporation” and then conversion of the same into “Biman Bangladesh Airlines Ltd.” is relevant to appreciate the factual and legal issues raised in the case.

12. Bangladesh Biman was established by the Bangladesh Biman Order, 1972 (P.O. No. 126 of 1972). The said P.O. was repealed by the Bangladesh Biman Corporation Ordinance, 1977. Under Section 3 of the Ordinance Bangladesh Biman Corporation was established. All assets, rights, powers, authorities, privileges, properties including aircrafts etc. of the Biman established by the P.O. stood transferred to and vested in the Corporation.

13. Section 28A was inserted into the Ordinance by Bangladesh Biman Corporation (Amendment) Act, 2009 (Act No. XX1 of 2009) with effect from 11.07.2007.

14. Section 28A is reproduced below:

“28A.(1) Notwithstanding anything contained to the contrary in this Ordinance, Government may, in public interest, convert the Corporation into a public limited company under the Company Act, 1994 (Act no. XVIII of 1994) [কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নং আইন)].

(2) The Government may, by agreement, transfer the entire undertaking of the Corporation to the Company referred to in sub-section (1) on such terms and conditions as may be specified in the agreement.

(3) As soon as the Corporation has been converted into a public limited company and undertaking of the Corporation has been transferred to the Company, the Government shall notify the fact in the official Gazette and shall, by the same notification, declare that the corporation has been dissolved.

Explanation: The word "undertaking of the Corporation" includes its employees, business, projects, schemes, assets, rights, powers, authorities and privileges, its properties, movable and immovable, reserve funds, investments, deposits, borrowings, liabilities and obligations of whatever nature.

(4) The Government may, for the purpose of removing any difficulty in relation to the transfer of the undertaking of the Corporation under sub-section (2) or the dissolution thereof under sub-section (3), make, by a notification published in the official Gazette, such order as it considers expedient and any such order shall be deemed to be, and given effect to as, part of the provisions of this Ordinance.”

15. On 23.07.2007 Biman Bangladesh Airlines Limited was registered as a public limited company under the Company Act, 1994. Pursuant to Section 28A, the Government on 31.07.2007 by S.R.O. No. 191-Ain/2007 converted Bangladesh Biman Corporation into Biman Bangladesh Airlines Limited and transferred the entire undertaking of the Corporation to the Biman Airlines Ltd. and dissolved the Corporation with effect from 31.07.2007. The said SRO No. 191-Ain/2007 was published in the Official Gazette on 02.08.2007 in additional issue. Thereafter, by another S.R.O. No. 268-Ain/2009 dated 21.12.2009 (published in the gazette on 27.12.2009 in additional issue) the earlier S.R.O. was amended and the date of dissolution of the Corporation was given effect from 22.07.2007.

16. The Ordinance, 1977 was declared void and non est by the apex Court on 01.02.2010 in Civil Petition Nos. 1044-1045 of 2009 (commonly known as the Constitution 5<sup>th</sup> Amendment Case, reported in 2010 BLD Special issue, p.1). Subsequently, the Ordinance was made effective retrospectively as an Act of Parliament by Section 4 of “১৯৭৫ সালের ১৫ আগস্ট হইতে ১৯৭৯ সালের ৯ এপ্রিল তারিখ পর্যন্ত সময়ের মধ্যে জারিকৃত কতিপয় অধ্যাদেশ কার্যকরন (বিশেষ বিধান) আইন, ২০১৩.”

17. The upshot of the above discussions is that Bangladesh Biman Corporation was dissolved on 22.07.2007. Biman Bangladesh Airlines Ltd. was registered as public company on 23.07.2007. The entire undertaking of the Corporation has been transferred to and vested in the Company. However, the Ordinance, 1977 is still effective subject to subsequent developments done pursuant to Section 28A of the Ordinance.

18. For the purpose of disposal of the Rule, which involves determination of the legality of the order retiring the petitioner from service by the Managing Director and CEO of the

Biman Bangladesh Airlines Ltd., the applicable laws are — the Ordinance, 1977 and Rules, 1988 made under the Ordinance. Since the Biman has been converted into a public limited company under the Company Act, 1994 the memorandum and the articles of association of the company have to be examined to see whether they contain any provision regarding removal of its employee.

19. There is an issue. Bangladesh Biman Corporation is dissolved. Biman Bangladesh Ltd. was born under Section 28A of the Ordinance and the same was incorporated under the Company Act. Now, the question is whether judicial review is maintainable against the Biman which is now a company limited by shares. The issue was not raised by the learned Advocate of the respondents.

20. In *Md. Arif Sultan vs. Chairman, Dhaka Electric Supply Authority and others*, 60 DLR (2008) 431, a Full Bench of this Division was called upon to decide two questions: (1) whether lifting the veil would be necessary in a case where the impugned order is issued by a company limited by shares held by the Government, and (2) whether the company, entire share of which is held by the Government, comes within the meaning of "local authority" so as to maintain writ petition against the same.

21. Same issue was raised in respect of Teletalk Bangladesh Ltd. (TBL) in *Mahbubur Rahman vs. Bangladesh and others*, 66 DLR (2014) 615 wherein the following passage from *Md. Arif Sultan* was quoted,

"In this age of survival of the fittest, the company must have the option to fire its employees in order to hire the most skilled ones. With the advent of the welfare state, it began to be increasingly felt that the frame-work of civil service was not sufficient to handle the new tasks which are often of specialized and highly technical character. The inadequacy of civil service to deal with the new problems came to be realized and it became necessary to form companies incorporated under the Companies Act by the Government. But it is important to note that the company must be allowed to determine its own fate according to Memorandum and Articles of Associations after its incorporation and that so long that is not allowed the company is deemed to be an instrumentality or agency of the Government or local authority. The interest of the Government will be taken care of by its nominated directors and not by the Government itself."

22. Referring to *Md. Arif Sultan*, it was observed in *Mahbubur Rahman*,

"The Court then proceeded to lay down a five-fold test to determine whether a company is an instrumentality or agency of the Government. The five-criteria test put in place appears not to be meant as exhaustive rather in the sense that the cumulative effect assessed on the criteria should indicate the answer. The conditions enumerated are as follows:

1. If the entire share capital of the company is held by the Government, it will go a long way towards indicating that the company is an instrumentality or agency of the Government.
2. Existence of deep and pervasive control of the Government.
3. The true rationale in setting up the company.
4. The company is fully dependent on the financial assistance of the Government.

5. The company is not run by the Memorandum and Articles of Association.”

23. It was further observed in *Mahbubur Rahman*,

“Here in this case it is difficult to identify TBL as an identity distinct from the Government. The huge venture is still entirely dependent on the public exchequer for its finance. Its Board is predominantly manned by the public functionaries who hold the position *ex officio* as servants of the Republic. All the Directors are nominated by the Government. The Board is substantially dependent on the Government for every major policy decision of the company. Exactly as is done by a government department, TBL acts under direction and supervision of the Ministry and keep the Ministry informed at least about important official transactions. Government control on TBL management and policy is as unusually deep and pervasive as to admit of no separate corporate autonomy or character of its own. It has no independent will distinct from the Government. All the indicators available on records lead to the irresistible conclusion that TBL as a company is nothing but a sham or facade. It is only identifiable as an instrumentality or agency of the Government. It follows that TBL must be subjected to same constitutional and public law limitation as the Government is.”

24. Reverting back to the case in hand, rule 5 (Ka) of Rules, 1988, which was made by the Government in exercise of the powers conferred upon it by Section 30 of the Ordinance, 1977, was invoked in giving retirement to the petitioner after completion of 25 years of service.

25. Having gone through the memorandum and articles of association of the Biman, the Ordinance and other materials on record and being fortified with the principles laid down in *Md.Arif Sultan*, 60 DLR 431 and *Mahbubur Rahman*, 66 DLR 615 and the fact that the statutory Rules, 1988 is still being followed by the Biman, we have no hesitation to hold that the instant writ petition is maintainable.

26. It is settled principle of law that memorandum and articles of association being the constitution of the company regulate the affairs of the company including the powers of the board of directors and others and thus, articles are mandatory to be followed if they are not in conflict with the company law.

27. Article Nos. 58 and 59 of the Articles of Association of the Biman deal with powers and duties of directors. Article 59 (b) states,

“To manage all concerns and affairs of the Company, to appoint, recruit and employ officers, organizers, workmen, day labourers for the purpose of the Company and to remove or dismiss them and appoint others in their place and to pay such persons as aforesaid such salaries, wages or other remuneration as may be deemed fit and proper.” (*emphasis supplied*)

28. The power to appoint, recruit and to remove or dismiss employees by the board of directors is not expressly provided in Section 8 of the Ordinance, 1977 which states that general power of superintendence of the affairs and business of the Corporation (now dissolved) shall vest in the board of directors subject to rules and regulations made under the Ordinance and the board may exercise all powers and do all acts and things which may be

exercised or done by the Corporation. Under article 59(x) of the Articles of Association of the Biman, the board of directors is authorised to delegate all or any of its powers and authorities to the Managing Director, who is also the Chief Executive Officer (CEO) of the Biman. Similar provision is contained in Section 10 of the Ordinance so far as it relates to delegation of authority to the Managing Director by the board of directors.

29. Rule 5 (Ka) of the Rules, 1988 provides that the Corporation may retire any of its employees after he has completed 25 years of service if it considers that he should be retired from the service in the interest of the Corporation.

30. In ***Bangladesh Biman vs. Md. Yousuf Haroon***, 10 BLT (AD) 22, which has been relied on by the respondent Biman, two employees of the Biman holding the post of General Manager and Chief Purser respectively were given retirement under Section 9(2) of the Public Servants (Retirement) Act, 1974 on completion of 25 years of service. The retirement order also quoted Bangladesh Biman Corporation Employees (Service) Regulations, 1979 and Rules, 1988. This Division set aside the order of retirement. The apex Court allowed the appeal filed by the Biman. The apex Court observed,

“Under section 10 of the Ordinance of 1977 Managing Director is the Chief Executive of the Corporation and shall exercise such power and perform such functions as may be assigned to him by the Board of Directors of the Biman Corporation of which he is a member or as may be prescribed. Prescribed means u/s 2(f) prescribed by rules or regulations made under the Ordinance. Under regulation 2(g) competent authority in relation to exercise of any power or performance of any function means the Board, the Chairman, Managing Director or any other person duly authorized to perform such duty. There is nothing in the Regulations and Rules what powers and functions may be exercised or performed by the Managing Director. Under Section 8 of the Ordinance subject to the Rules and Regulations general direction and Superintendence of the affairs and business of the Corporation shall vest in the Board of Directors. In the writ petitions respective petitioner (respondent No. 1) alleged that there is no decision of the Board of Directors approving the respective impugned order of retirement. But there is no challenge to the authority of the Managing Director to pass such an order. In the affidavits-in-opposition appellants asserted that the Managing Director as the Chief executive of the Corporation has the power and competence to pass the impugned orders. No affidavit-in-reply has been filed by the respective respondent No. 1 denying the assertion made in the affidavit-in-opposition filed in the respective writ petition. When power and competence of the Managing Director has not been challenged by the respective respondent No. 1 High Court Division was not justified in holding in W.P. No. 779 of 1998 that the order of retirement of the writ petitioner (respondent No. 1 of C.A. 37/1999) passed by the Managing Director without approval of the Board of Directors was without jurisdiction. When Managing Director has power and authority to pass an order of retirement approval of the Board of directors is not at all necessary.” (emphasis supplied)

31. Mr. Salah Uddin Dolon draws our attention to documents annexed to the affidavit-in-reply filed by the petitioner and submits that it is now consistent practice of the Biman that



the board of directors either takes the decision in matters relating to removal of its employees from service or delegates that power to the Managing Director and CEO.

32. Upon perusal of the documents, it appears that the Chief Engineer (Engineering Services) of the Biman was suspended, vide memo dated 04.09.2019 under regulation 58 of the Service Regulations, 1979 as per decision of board of directors taken in its 228<sup>th</sup> meeting. Similarly, the Deputy General Manager of the Biman was suspended, vide memo dated 21.01.2020 under regulation 58 as per the board's decision taken in its 234<sup>th</sup> meeting. It further appears that in the 265<sup>th</sup> meeting of the board of directors of the Biman, the board delegated its power to remove the cockpit crews (special pay group) against whom allegations were made to the Managing Director and CEO of the Biman. In exercise of the said power, the Managing Director and CEO of the Biman terminated the service of a Captain of the Biman, vide memo dated 29.11.2021. It was stated in the said memo, "In exercise of the power conferred under Article 59 (b) of the Articles of Association of Biman Bangladesh Airlines Ltd and such power is conferred/delegated to MD and CEO by the 265<sup>th</sup> meeting of the Board of Directors, Biman Bangladesh Airlines on 31<sup>st</sup> October, 2021, accordingly, your service is terminated with immediate effect as per decision of Biman Bangladesh Airlines Ltd". (emphasis supplied)

33. It is apparent from the above that under the changed circumstances as to the identity of the Biman following the amendment of the Ordinance and giving effect to the same by dissolving the Corporation and converting it into a public limited company, the Biman gave effect to article 59(b) of the articles of association in consonance with other applicable laws/rules/regulations which are still effective subject to developments taken place after insertion of Section 28A to the Ordinance. *Md. Yousuf Haroon* was decided on 22.05.2000 i.e. prior to insertion of Section 28A to the Ordinance, 1977 and dissolution of the Corporation and conversion of the same into a public limited company. In *Captain Mir Mazharul Huq*, 70 DLR (AD) 16 (decided on 11.04.2017) the apex Court endorsed the views taken in *Md. Yousuf Haroon*. The ratio laid down in *Md. Yousuf Haroon* to the effect, "When Managing Director has power and authority to pass an order of retirement approval of the Board of Directors is not all necessary" is no longer being followed by the Biman itself. In our view, the Biman rightly applied article 59(b) of the articles of association since the same is not in conflict with applicable laws/rules/regulations rather a coherent interpretation and application of article 59(b) has been given effect to in the backdrop of applicable legal regime. For this reason the Biman did not follow and apply *Md. Yousuf Haroon* after dissolution of the Corporation and conversion of the same into company due to change of circumstances and accordingly, it obtained prior approval and/or authorisation of the board in the matter of removal of its employees from service in other cases discussed above.

34. In the affidavit-in-opposition dated 27.01.2022 note sheets under Nothi No. 30.34.0000.068.02.056.20 have been annexed as Annexure-2. It is stated in note No. 14, dated 24.02.2020, "বর্নিত অবস্থায় জনাব মমিনুল ইসলাম, পি-৩৩৭৪০ পরিচালক প্রকিউরমেন্ট এন্ড লজিস্টিক সাপোর্ট এর বিষয়ে করণীয় সম্পর্কে সিদ্ধান্তের জন্য পেশ করা হল". Note No. 15 signed by Managing Director and CEO on 25.02.2020 runs as follows:

“১৫। নথির নোটানুচ্ছেদ- ১ থেকে ১৪ এবং আনুসঙ্গিক ও নথি পত্র পর্যালোচনা করা হলো। পর্যালোচনায় প্রতীয়মান হয় বিমান বাংলাদেশ এয়ারলাইন্স লিমিটেডের স্বার্থে বিবেচ্য কর্মকর্তা জনাব মমিনুল ইসলাম (পি-৩৩৭৪০) ডিপিএলএস কে কোম্পানীর দায়িত্বে বহাল না রাখাই এয়ারলাইন্স এর জন্য মঙ্গলজনক/বাঞ্ছনীয়। বিমান বাংলাদেশ এয়ারলাইন্স কর্তৃক গৃহীত ও অনুসৃত বাংলাদেশ বিমান কর্পোরেশন কর্মচারী (অবসর ও অনুতোষিক) বিধিমালা ১৯৮৮ এর বিধি ৫(ক) অনুযায়ী সংস্থার স্বার্থে ২৫ বৎসর চাকুরি সমাপনান্তে অবসর প্রদান করা প্রয়োজন মনে করলে কর্মকর্তা/কর্মচারীকে অবসর প্রদান করা যাবে। জনাব মমিনুল ইসলাম (পি-৩৩৭৪০) গত ০৩/১১/১৯৮৬ খ্রিঃ তারিখে জুনিয়র সিকিউরিটি অফিসার হিসেবে চাকুরিতে যোগদান করেছেন এবং ইতোমধ্যে চাকুরিকাল ২৫(পঁচিশ) বৎসর পূর্ণ হয়েছে, বিমান বাংলাদেশ এয়ারলাইন্স লিমিটেডের স্বার্থে বর্ণিত বিধিমালা ১৯৯৮ এর বিধি ৫(ক) অনুযায়ী জনাব মমিনুল ইসলাম (পি-৩৩৭৪০) ডিপিএলএসকে অবসর প্রদান করা হলো-যা অদ্য ২৫/২/২০২০ থেকে কার্যকর গণ্য। পরিচালক প্রশাসন জনাব জিয়াউদ্দিন আহমেদ (জি-৫১৩৯৪) পরবর্তী নির্দেশ প্রদান না করা পর্যন্ত নিজ দায়িত্বের অতিরিক্ত ডিপিএলএস এর দায়িত্ব পালন করবেন। আদেশ জারী করুন।”

35. In the affidavit-in-opposition dated 07.02.2022 separate note sheets under reference No. 30.34.0000.68.10.005.20 have been annexed as Annexure-22. Note No. 13 of the said Nothi, which was signed by the Managing Director and CEO on 25.02.2020, is quoted below,

“১৩। অনুচ্ছেদ-৮ থেকে ১২ দেখলাম।

জনাব মুমিনুল ইসলাম পরিচালক হিসেবে দায়িত্বে পালনে যথাযথ ভূমিকা রাখার পরিবর্তে নানাবিধ ঝামেলা সৃষ্টি করছেন। বিষয়টি পরিচালনা পর্যদকে অবহিত করা হয়েছে। পরিচালক হিসেবে কোন পদেই যেহেতু তিনি মানসম্মত দায়িত্ব পালন করতে পারছেন না এবং স্বল্প সময়ের মধ্যে অত্যন্ত তিনটি পরিচালকের পদে দায়িত্ব প্রদান করেও তেমন উন্নতি হয়নি। পরিচালনা পর্যদ তাকে with benefit চাকুরি থেকে অবসর প্রদানের সম্মতি দিয়েছে। সার্বিক বিষয়াদি প্রতীয়মান হয় বিমান বাংলাদেশ এয়ারলাইন্স লিঃ এর স্বার্থে জনাব মুমিনুল হককে চাকুরি থেকে অবসর প্রদান করা প্রয়োজন। এ প্রেক্ষাপটে, বিমান বাংলাদেশ এয়ারলাইন্স লিঃ গৃহীত ও অনুসৃত বাংলাদেশ বিমান কর্পোরেশন কর্মচারী (অবসরভাতা ও অনুতোষিক) বিধিমালা, ১৯৮৮ এর বিধি ৫(ক) অনুযায়ী জনাব মুমিনুল হককে বিমান বাংলাদেশ এয়ারলাইন্স এর চাকুরি হতে অবসর প্রদান করা হলো। আদেশ স্বাক্ষর করা হলো। জারী করুন।” (*emphasis supplied*)

36. It appears from the above that in note No. 15 dated 25.02.2020 the approval/decision/resolution of the board was not mentioned, but surprisingly in note No. 13 dated 25.02.2020 of a separate Nothi it is stated that the board had given consent to retiring the petitioner with benefit. It further appears from note No. 12 of the same note sheets that those were placed before the Managing Director and CEO on 25.02.2020. The impugned order was issued on 25.02.2020. So, when did the board of directors decide the matter and gave consent to the same? Is it on 25.02.2020? What is the number of the board meeting? Where are the minutes of the meeting? The respondents could not give any answer to these questions. No decision of the board was placed before us. We have examined the personal file of the petitioner and the connected file provided by the Biman. We have not found any decision of the board. Mr. Dolon submits that Note No. 13 is after thought and was created to justify the malafide action of the Managing Director and CEO of the Biman.

37. The impugned order does not mention any decision of the Board of directors of the Biman, whereas, it is already noted that in the matter of removal from the service, the Biman

follows article 59(b) of its articles of association and in the respective office orders reference of the decision of the board is mentioned. In the circumstances, the respondents are not allowed to rely on the case of *Md. Yousuf Haroon* on the basis of the principle of approbation and reprobation.

38. In judicial review of administrative actions, the Court has to start with the presumption of regularity of the official acts which is incorporated in illustration (e) to Section 114 of the Evidence Act. The burden of proof is on the party who alleges the contrary. In the present case, the petitioner has successfully rebutted the presumption. The case of *Shinepukur Holdings Ltd.*, 50 DLR (AD) 189 is of no assistance to the respondents.

39. The ratio laid down in *Bangladesh Shipakala Academy vs. Shahidul Islam and another*, 50 DLR (AD) 1 in respect of competency of the authority in the matter of removal/dismissal from the service is relevant here. It was held,

“It is true that the Director General was authorised to take all action under the said Rules but in order to take the decision of dismissal of the respondent it was clearly necessary to authorise the Director General in specific terms in that behalf since he was not the appointing authority of the respondent. Dismissal from service is a serious matter and only a competent authority under the law is entitled to pass an order of dismissal. If the Parishad decided that the Director General should be invested with the power to dismiss a Director who has been appointed by the Parishad then a very clear and explicit resolution was required to be taken authorising the Director General to pass an order of dismissal of a Director who was appointed by the Parishad. The resolutions which have been relied upon by the learned Advocate for the appellant are clearly not adequate enough to read in them a power authorising the Director General to dismiss a person appointed by the Parishad.” (*emphasis given*)

40. In the case in hand, the Managing Director and CEO of the Biman issued the impugned order retiring the petitioner from service without any decision of the board of directors. No power was delegated to him to take the decision. Therefore, he was not competent authority to retire the petitioner. For this reason coupled with the attending facts and circumstances of the case, the unauthorised exercise of power by the Managing Director and CEO of the Biman is also without jurisdiction, arbitrary and malafide. Accordingly, we find merit in the Rule.

41. In the result, the Rule is made absolute. The impugned order dated 25.02.2020 (Annexure-P) giving retirement to the petitioner is declared to have been passed without any lawful authority and is of no legal effect. The respondents are directed to reinstate the petitioner in the service forthwith with arrear salary and other attendant benefits.

42. Communicate the order to the respondents at once.