

2 SCOB [2015] HCD 95

**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 2412 OF 2007

First Money Changers Limited
..... Petitioner

-Versus-

The Bangladesh Bank and others
.....Respondents

Mr. M. Qumrul Haque Siddique, Advocate
.....For the petitioner.
Mr. M. Sakhawat Hossain, Advocate
....For the respondents.

Heard on 07.05.2015, 21.05.2015 and
16.06.2015.
Judgment on 21.06.2015.

Present:

Mr. Justice Moyeenul Islam Chowdhury
-And-
Mr. Justice Md. Ashraful Kamal

Foreign Exchange Regulation Act, 1947

Section 3:

and

General Clauses Act

Section 16:

According to Section 16 of the General Clauses Act, where, by any Act of Parliament or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. As the suspension of licence is not there in Section 3 of the Act of 1947, in our opinion, the provisions of Section 16 of the General Clauses Act can definitely be invoked in order to give a complete and harmonious interpretation of Section 3 of the Act of 1947. What we are driving at boils down to this: the authority making any appointment has the power to suspend the licence of any person appointed. ... (Para 12)

JUDGMENT

MOYEENUL ISLAM CHOWDHURY, J:

1. On an application under Article 102 of the Constitution filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why the Memo No. ৱহ্‌ ৱফ (Ahj) 144/128/2000-141 dated 13.01.2000 issued by the respondent no. 3 suspending the licence of the petitioner should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. The case of the petitioner, as set out in the Writ Petition, in short, is as follows:

The petitioner is a private company limited by shares. Anyway, the respondent no. 1 issued licence no. ৱহ্‌ ৱফ (Ahj) 144/97-1622 dated 17.09.1997 under Section 3 of the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the Act of 1947) in favour of the petitioner. After obtaining the licence under Section 3 of the Act of 1947, the petitioner started money changer business at 16, Atish Dipankar Sarak, Maddhya Bashabo, Dhaka. Subsequently when the business flourished, the petitioner shifted the location of his business at 62/1, Purana Paltan (Ground Floor), Dhaka with the permission of the licensing authority. At one stage, one Mr. Md. Iqbal bearing Pakistani Passport No. G-704225 dated 17.07.1999 with valid visa came over to Bangladesh on

26.09.1999 who brought 1,96,250 Iraqi Dinars which were duly declared by him to the Customs Authority at Hazrat Shah Jalal International Airport. On 06.10.1999, Mr. Md. Iqbal through his business partner in Bangladesh Mr. Md. Akter Hossain placed the aforesaid 1,96,250 Iraqi Dinars to the petitioner for Bangladesh Currency in exchange along with a photocopy of his passport and declaration in FMJ Form. But the rate of exchange of Iraqi Dinar was not instantly available for which the petitioner had to tell them to hang on till exchange rate could be collected and they agreed. However, a few minutes later, one police Inspector of Detective Branch of Dhaka Metropolitan Police came to the office of the petitioner and seized the Iraqi Dinars and arrested Mr. Md. Mostafa Khan, Managing Director of the petitioner-company. By the impugned Memo No. ৩৮৫ (Ahj) 144/128/2000-141 dated 13.01.2000, the respondent no. 3 directed the petitioner to show cause within 10 (ten) days as to why the money changer licence should not be cancelled alleging that the petitioner held 1,96,250 Iraqi Dinars illegally without issuing any encashment certificate to the seller and keeping proper record of purchase and at the same time suspended the money changer licence of the petitioner until further orders. On 30.01.2000, the petitioner by letter No. FMCL 03/2000 submitted their explanation to the show cause notice and prayed for withdrawal of the order of suspension of the money changer licence contending, inter alia, that on 06.10.1999, the police seized 1,96,250 Iraqi Dinars, though instantly a photocopy of the passport and FMJ Form of the seller was shown. But for want of exchange rate, exchange money or encashment certificate could not be issued to the seller and recorded in the relevant register. The Iraqi Dinars were not illegally held and possessed by the petitioner. On 18.01.2000, Md. Rezaul Karim, Inspector of Detective Branch, lodged Motijheel Police Station Case No. 66 under Section 25B of the Special Powers Act, 1974 against Mr. Md. Mostafa Khan, Managing Director of the petitioner-company concerning the occurrence. After investigation, the police submitted charge-sheet and the case was sent to the Special Tribunal No. 12, Dhaka and the same was registered as Metro Special Tribunal Case No. 526 of 2001. In the Metro Special Tribunal Case No. 526 of 2001, Mr. Md. Iqbal, owner of the seized Iraqi Dinars, submitted an application praying for return of the seized money to him on 24.05.2000; but that application was turned down. Eventually Mr. Md. Mostafa Khan was charged with the offence punishable under Section 25B of the Special Powers Act by the Special Tribunal on 28.04.2002. Thereafter the petitioner filed Criminal Miscellaneous Case No. 9274 of 2004 in the High Court Division under Section 561A of the Code of Criminal Procedure for quashing the proceedings of the Metro Special Tribunal Case No. 526 of 2001 and after initial hearing, the High Court Division by its order dated 29.11.2004 issued a Rule and stayed all further proceedings of the case pending disposal of the Rule. The petitioner-company has been adversely affected by the order of suspension of the money changer licence as a result of which the petitioner-company has been incurring a whopping loss in their business. However, the respondent no. 3 cannot suspend the money changer licence of the petitioner under Section 3 of the Act of 1947 and that being so, the impugned order is without lawful authority and of no legal effect.

3. The respondents have filed an Affidavit-in-Opposition opposing the Rule. Their case, as set out in the Affidavit-in-Opposition, in short, is as follows:

A team of Detective Branch of Dhaka Metropolitan Police, Dhaka headed by Mr. Rezaul Karim, acting on a tip-off, moved to the office of the petitioner and found that the Managing Director of the petitioner-company, that is to say, Mr. Md. Mostafa Khan was holding and possessing Iraqi Currency to the tune of 1,96,250 Dinars illegally and consequently they seized the Iraqi Dinars together with the Cash Book Register and Buying Register of the petitioner-company and also arrested its Managing Director Mr. Md. Mostafa Khan. Subsequently Mr. Rezaul Karim lodged a First Information Report (FIR) with Motijheel Police Station being Motijheel Police Station Case No. 66 dated 18.01.2000 against Mr. Md. Mostafa Khan under Section 25B of the Special Powers Act which was ultimately registered as Metro Special Tribunal Case No. 526 of 2001 by the Special Tribunal concerned. Before disposal of the Metro Special Tribunal Case No. 526 of 2001 by the Special Tribunal concerned, there is no scope to withdraw the order of suspension of the money changer licence of the petitioner-company. As per Section 16 of the General Clauses Act, 1897, the authority is empowered to suspend the money changer licence of the petitioner-company. By suspending the licence of the petitioner-company, the Bangladesh Bank Authority did not commit any illegality. So the impugned Memo No.

সিদ্ধান্ত (Ahj) 144/128/2000-141 dated 13.01.2000 issued by the respondent no. 3 suspending the licence of the petitioner-company is valid and sustainable in law.

4. At the outset, Mr. M. Qumrul Haque Siddique, learned Advocate appearing on behalf of the petitioner-company, submits that the petitioner-company was granted licence by the Bangladesh Bank Authority under Section 3 of the Act of 1947 for money changer business on 17.09.1997 and the licence may be revoked by the Bangladesh Bank for reasons appearing to it sufficient and as Section 3 of the Act of 1947 does not contemplate suspension of the licence of any money changer business, the Bangladesh Bank Authority exceeded its jurisdiction in suspending the licence of the petitioner-company and that being so, the impugned order dated 13.01.2000 is ex-facie without lawful authority and of no legal effect.

5. Mr. M. Qumrul Haque Siddique further submits that as Section 3 of the Act of 1947 does not specifically provide for suspension of any licence, the provisions of Section 16 of the General Clauses Act can not be invoked as an aid to the interpretation of Section 3 of the Act of 1947 and had the Legislature really contemplated suspension of any money changer licence by the Bangladesh Bank, the Legislature would have definitely made a provision for suspension of the same in Section 3 of the Act of 1947.

6. Mr. M. Qumrul Haque Siddique also submits that although the petitioner-company was a licensee of the Bangladesh Bank, yet it cannot be said that the company was an agent of the principal (Bangladesh Bank) and the observation made by the Appellate Division in this regard in the decision in the case of Mustafa Zamil Ahmed...Vs...Governor of Bangladesh Bank and others reported in 53 DLR (AD) 66 is in the nature of an 'obiter dictum'.

7. Per contra, Mr. M. Sakhawat Hossain, learned Advocate appearing on behalf of the respondents, submits that as per Section 16 of the General Clauses Act, 1897, where, by any Act of Parliament or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power and by virtue of the provisions of Section 16 of the General Clauses Act, the Bangladesh Bank is competent to suspend the licence of the petitioner-company; albeit there is no specific provision in that behalf in Section 3 of the Act of 1947.

8. Mr. M. Sakhawat Hossain also submits by referring to the decision in the case of Mustafa Zamil Ahmed...Vs...Governor of Bangladesh Bank and others reported in 53 DLR (AD) 66 that the petitioner-company being the licensee was the agent of the principal, that is to say, Bangladesh Bank and the principal has always the right to suspend the licence of its agent.

9. We have heard the submissions of the learned Advocate Mr. M. Qumrul Haque Siddique and the counter-submissions of the learned Advocate Mr. M. Sakhawat Hossain and perused the Writ Petition, Affidavit-in-Opposition and relevant Annexures annexed thereto.

10. In the facts and circumstances of the case and in view of the submissions and counter-submissions of the learned Advocates, the bone of contention that emerges is that whether the Bangladesh Bank has the right to suspend the licence of the petitioner-company in the absence of any specific provision to that effect in Section 3 of the Act of 1947. In order to resolve the bone of contention, the relevant provisions of Section 3 of the Act of 1947 are quoted below verbatim:

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

(2) An authorization under this Section-

(i) may authorize dealings in all foreign currencies or may be restricted to authorizing dealings in specified foreign currencies only;

(ii) may authorize transactions of all descriptions in foreign currencies or may be restricted to authorizing specified transactions only;

(iii) may be granted to be effective for a specified period, or within specified amounts, and may in all cases be revoked for reasons appearing to it sufficient by the Bangladesh Bank.

.....”

11. From a bare reading of the aforementioned provisions of Section 3 of the Act of 1947, it seems that it does not provide for suspension of any licence in so many words; rather it expressly provides for revocation of any licence for reasons appearing sufficient to the Bangladesh Bank. In other words, the Bangladesh Bank, for sufficient reasons, may revoke licences in all cases.

12. At this juncture, the all-important question that arises is this: can the Court call in aid the provisions of Section 16 of the General Clauses Act in interpreting Section 3 of the Act of 1947? The General Clauses Act is an Interpretation Act. This is often called the ‘grammar’ or ‘dictionary’ of law. According to Section 16 of the General Clauses Act, where, by any Act of Parliament or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. As the suspension of licence is not there in Section 3 of the Act of 1947, in our opinion, the provisions of Section 16 of the General Clauses Act can definitely be invoked in order to give a complete and harmonious interpretation of Section 3 of the Act of 1947. What we are driving at boils down to this: the authority making any appointment has the power to suspend the licence of any person appointed.

13. In this respect, our view stands fortified by the decision in the case of Mustafa Zamil Ahmed...Vs...Governor of Bangladesh Bank and others reported in 53 DLR (AD) 66 relied on by Mr. M. Sakhawat Hossain. In that decision, paragraphs 6 and 7 appear to be very relevant for our purpose and those 2(two) paragraphs are reproduced below:

“6. It has been argued that the criminal case started against the petitioner and others has been pending for long and the petitioner is suffering huge financial loss on account of rent for the premises, salary of staff, etc. on account of the order of suspension. Furthermore, he argues that Bangladesh Bank, the principal, had no right to suspend the licence of its agent lawfully appointed.

7. We find no substance in the submissions. The principal has always a right to take action against his agent for misdemeanour, specially when it is of criminal nature.”

14. In the cited case, an argument was placed before the Appellate Division that the principal, that is to say, the Bangladesh Bank had no right to suspend the licence of its agent lawfully appointed; but that argument was negatived; rather the Appellate Division in categorical, unequivocal and unmistakable terms held that the principal (Bangladesh Bank) had the right to take action against its agent for misdemeanour, specially when it is of criminal nature.

15. Indisputably the Managing Director of the petitioner-company Mr. Md. Mostafa Khan is an accused in the Special Tribunal Case No. 526 of 2001 which is pending in the Special Tribunal. It is further admitted that the proceedings of the case have been stayed by the High Court Division in Criminal Miscellaneous Case No. 9274 of 2004 under Section 561A of the Code of Criminal Procedure. Having regard to the facts and circumstances of the case, we think, it would be advisable on the part of the petitioner-company to take necessary steps for early disposal of the Criminal Miscellaneous Case No. 9274 of 2004 on merit.

16. From the foregoing discussions, we find no merit in the Rule. The Rule, therefore, fails.

17. Accordingly, the Rule is discharged without any order as to costs.