

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No.14173 of 2016

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh

-AND-

IN THE MATTER OF:

Md. Rahmat Ali

.....Petitioner

-Versus-

The Government of Bangladesh and others

.....Respondents

No one appears

...for the petitioners

Mr. Wayes Al Harooni,
Deputy Attorney General

...for the respondent Nos.4 & 5

Heard on: 12.01.2023

Judgment on: 28.08.2023

Present

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice A.K.M Rabiul Hassan

A.K.M. Rabiul Hassan, J:

This Rule was issued on an application filed by the petitioner under Article 102 of the Constitution calling upon the respondents to show cause as to why Section 16 of the Special Powers Act, 1974 shall not be declared void, inoperative, unenforceable *ultra vires* of the Constitutional and as to why the proceeding of Special Tribunal Case

No. 44 of 2014, corresponding to G.R. Case No. 01 of 2014, arising out of Balagonj Police Station Case No. 01 of 2014 under Section 16(2) of the Special Powers Act, 1974, now pending before the Special Tribunal No.4, Sylhet, shall not be declared to have been initiated without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay the aforesaid proceeding of Special Tribunal Case No.44 of 2014, till to disposal of the instant Rule.

Facts leading to the issuance of the Rule are, in brief, as follows:

In this writ petition, it has been stated that on 01.01.2014, one S.I. Md. Arifur Rahman as Informant lodged a First Information Report (F.I.R.) with Balagonj Police Station alleging *inter alia*, that during the strike/blockade called by the 18-party alliance all over the country, the Informant got the information that some persons blocked the main road on the northern side of Boaljur Bazar with wood logs and setting fire on tyres and causing violence and obstruction of the public movement. After getting the aforesaid information, the Informant along with his team rushed to the place of occurrence and arrested the accused petitioner and others, and thereafter filed the instant case, which was registered as Balagong Police Station Case No. 01 of 2014 under Section 16(2) of the Special Powers Act, 1974, corresponding to G.R Case No.1 of 2014. Subsequently, the aforesaid case was investigated by the police and submitted a Charge Sheet against the petitioner and others under

Section 16(2) of the Special Powers Act, 1974, which was accepted by the court below. Being aggrieved, the petitioner has preferred this application before this Court challenging the aforesaid proceedings under Article 102 of the Constitution and obtained the instant Rule and stay.

None appears on behalf of the petitioner to press the Rule.

In this writ petition, the petitioner has stated that after investigating the aforesaid case, the police submitted the charge sheet against the petitioner and others under Section 16(2) of the Special Powers Act 1974, which has no legal force in the eye of the law and as such the aforesaid proceeding is liable to be set aside.

Mr. Wayesh Al Harooni, the learned Deputy Attorney General appearing for respondents Nos. 4 and 5 submits that earlier the provision of Section 16 of the Special Powers Act 1974, was repealed by Section 3 of the Special Powers (Amendment) Act 1991, but subsequently, the then Care Taker Government has restored the aforesaid provision by the Ordinance No.3 of 2007 and as such, it has a legal force in the eye of law. Therefore, the instant Rule is liable to be discharged.

Heard the learned Deputy Attorney General and perused the instant writ petition thoroughly.

The only issue for determination of this Rule is to see whether the provision of Section 16(2) of the Special Power Act, 1974 has any legal force in the eye of the law at present.

It is an admitted fact that the provision of Section 16(2) of the Special Powers Act, 1974 has been repealed earlier in the year of 1991. In order to appreciate the contention of the learned Deputy Attorney General, it is necessary to examine the relevant provision of Article 93 of the Constitution, which reads as follows:

93. (1) At any time when [Parliament stands dissolved or is not in session], if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such Ordinances as the circumstances appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament:

Provided that no Ordinance under this clause shall make any provision – (i) which could not lawfully be made under this Constitution by Act of Parliament; (ii) for altering or repealing any provision of this Constitution; or (iii) continuing in force any provision of an Ordinance previously made.

(2) An Ordinance made under clause (1) shall be laid before Parliament at its first meeting following the promulgation of the Ordinance and shall, unless it is earlier repealed, cease to have effect at the expiration of thirty days after it is so laid or, if a resolution disapproving of the Ordinance is passed by

Parliament before such expiration, upon the passing of the resolution.

(3)

(4)

On perusal of the provision of aforesaid Article, it transpires that if any Ordinance is made under Clause 1 of Article 93 of the Constitution, it must be placed before the Parliament at its first meeting following the promulgation of the said Ordinance for its approval, failing which it ceased to have legal effect after the expiration of 30 (thirty) days from its first meeting.

In the instant case, the aforesaid Ordinance of 2007 in connection with the provision of Section 16(2) of the Special Powers Act, 1974 has not been placed before the Parliament for its approval. Accordingly, as per the provision of Article 93(2) of the Constitution, the aforesaid Ordinance of 2007 has already lost its legal force.

We have noticed that in the instant case, the police has submitted the Charge Sheet No.75 dated 25.09.2014 against the petitioner and others under Section 16(2) of the Special Powers Act, 1994, which has already ceased its validity as per the provision of Article 93(2) of the Constitution and, as such, the impugned proceedings of Special Tribunal Case No. 44 of 2014 under Section 16(2) of the Special Powers At, 1974 is liable to be quashed.

Having regard to the aforesaid facts and circumstances of the instant case and the reasons as stated above, we find substance in this Rule.

Accordingly, the Rule is made absolute.

The proceedings of the Special Tribunal Case No. 44 of 2014, arising out of Balagonj Police Station Case No. 01 of 2014, corresponding to G.R. Case No. 01 of 2014, under Section 16(2) of the Special Powers Act, 1974, now pending before the Special Tribunal No.4, Sylhet, is hereby declared to have been initiated without lawful authority and is of no legal effect and thereby set aside the same.

Let a copy of this judgment be communicated to the concerned Court below at once.

Abu Taher Md. Saifur Rahman, J:

I agree.