

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

CONTEMPT PETITION NO. 202 OF 2017
(Arising out of Writ Petition No. 1382 of 2017)

IN THE MATTER OF:

An application for drawing up a contempt proceeding.

-AND-

IN THE MATTER OF:

Dr. Kamila Afroj Quadir

.....Petitioner

-Versus-

Mr. Md. Anowar Hossain, Secretary (Current Charge),
Ministry of Science and Technology, Bangladesh
Secretariat, Ramna, Dhaka and others

..... Contemnor-Respondents

Mr. K. M. Tanjib-ul Alam with
Mr. Kazi Ershadul Alam, Advocates

.....For the petitioner.

Mr. A. J. Mohammad Ali with
Mr. Momtazuddin Ahmed (Mehedi), Advocates

...For the contemnor-respondent no. 2.

Mr. A. F. Hassan Ariff with
Mr. Sayed Mhaymen Baksh Kollol, Advocates

...For the contemnor-respondent no. 4.

Heard on 10.07.2017, 20.07.2017 &
30.07.2017.

Judgment on 06.08.2017.

Present:

Mr. Justice Moyeenul Islam Chowdhury

-And-

Mr. Justice J. B. M. Hassan

MOYEENUL ISLAM CHOWDHURY, J:

On an application filed by the petitioner, a Rule was issued calling upon the contemnor-respondent nos. 1-5 to show cause as to why a proceeding of contempt of court should not be drawn up against them for wilfully flouting and disregarding the interim order dated 31.01.2017 passed by this Court in Writ Petition No. 1382 of 2017 and why they should not be punished for wilful disobedience of the aforesaid interim order of the Court and/or such other or further order or orders passed as to this Court may seem fit and proper.

The case of the petitioner, as set out in the contempt petition, in short, is as follows:

The petitioner Dr. Kamila Afroj Quadir is the Chief Scientific Officer and Director, Bio-science Division of the Bangladesh Atomic Energy Commission, Paramanu Bhaban, E-12/A, Agargaon, Sher-E-Bangla Nagar, Dhaka. The petitioner joined the Commission on 27.07.1986 as Scientific Officer and since then, she has served the Bio-science Division of the Commission as a reputed and notable scientist. Anyway, she filed Writ Petition No. 1382 of 2017 impugning the office Memo No. 39.01.0000.218.11.001.16.103 dated 25.01.2017 purportedly proposing the names of eight officers of the Commission to the Ministry of Science and Technology for consideration for appointment to the post of Member (Bio-science) of the Commission excluding the name of the petitioner in violation of her fundamental rights. The impugned Memo dated 25.01.2017 was issued seeking bio-data from those eight officers of the Bangladesh Atomic Energy

Commission for the purpose mentioned above. The impugned Memo failed to consider the petitioner as one of the potential candidates, whereas the names of the officers, who are junior to the writ-petitioner, were mentioned in the impugned Memo, in violation of her right to be considered for promotion to the post of Director, Bio-science Division of the Commission. However, after filing of the Writ Petition No. 1382 of 2017, this Court issued a Rule Nisi calling upon the respondents to show cause as to why the Memo No. 39.01.0000.218.11.001.16-103 dated 25.01.2017 (Annexure-‘K’ to the Writ Petition) purportedly proposing the names of eight officers of the Bangladesh Atomic Energy Commission to the Ministry of Science and Technology for consideration for appointment to the post of Member (Bio-science) omitting the name of the petitioner in violation of seniority should not be declared to be without lawful authority and of no legal effect. At the time of issuance of the Rule Nisi on 31.01.2017, by an interim order, this Court stayed the operation of the impugned Memo No. 39.01.0000.218.11.001.16-103 dated 25.01.2017 (Annexure-‘K’ to the Writ Petition) for a period of 3(three) months and subsequently on 10.04.2017, the period of stay was extended for a further period of 3(three) months. During the subsistence of the interim order of stay dated 31.01.2017, the contemnor-respondent no. 3, under instruction from the contemnor-respondent no. 1, issued a notification bearing Memo No. 39.00.0000.006.12.026.16-227 dated 20.04.2017 appointing Dr. Raihan Hussain (contemnor-respondent no. 4), Chief Medical Officer and Director, National Institute of Nuclear Medicine and Allied Sciences as Member, Bio-science Division of the Commission on current charge. This notification was issued by the contemnor-respondent nos. 1 and 3 in wilful disregard of the

interim order of stay passed by this Court on 31.01.2017. The other contemnor-respondents also did not pay any heed to the interim order of stay dated 31.01.2017 which was subsisting at the relevant point of time. The contemnor-respondent no. 4, in wilful violation of the interim order dated 31.01.2017 passed in the Writ Petition No. 1382 of 2017, was appointed as Director, Bio-science Division of the Bangladesh Atomic Energy Commission who was admittedly junior to the writ-petitioner. By appointing the contemnor-respondent no. 4 to the post of Member, Bio-science Division of the Commission on current charge, all the contemnor-respondents conjointly incurred the liability of being punished for committing contempt of court. Hence the Rule.

The contemnor-respondent no. 2 Dr. Engineer Md. Monzurul Haque has filed an Affidavit-of-Facts. The main averments in the Affidavit-of-Facts are, in short, as follows:

The contemnor-respondent no. 2, at the outset, tenders an unconditional apology and throws himself at the mercy of this Court for commission of any inadvertent mistake vis-à-vis the interim order dated 31.01.2017 passed by this Court in the Writ Petition No. 1382 of 2017. He expresses deep sorrow, repentance and remorse for issuance of the order dated 20.04.2017 (Annexure-‘E’ to the Contempt Petition). It may be mentioned that the Bangladesh Atomic Energy Commission consists of a Chairman and four Members in different fields and amongst them, the post of Member (Bio-science) was lying vacant and for appointment to this post of Member (Bio-science), the Bangladesh Atomic Energy Commission proposed the names of its eight officers to the Ministry of Science and Technology on the basis of

the decisions of the meetings held on 16.01.2017 and 22.01.2017. Since the name of the writ-petitioner was omitted from Annexure-‘K’ to the Writ Petition, she filed the Writ Petition and obtained the Rule Nisi along with an interim order of stay. During the pendency of the Rule Nisi and the subsistence of the interim order of stay, the Bangladesh Atomic Energy Commission, under the signature of the contemnor-respondent no. 2, proposed the names of three officers including the name of the petitioner to the Ministry of Science and Technology for consideration for appointment to the post of Member (Bio-science) on current charge only to run the day-to-day affairs of the Commission.

As the name of the writ-petitioner was earlier omitted from Annexure-‘K’ to the Writ Petition, the contemnor-respondent no. 2 forwarded the names of three officers including the name of the petitioner to the Ministry of Science and Technology for appointment to the post of Member (Bio-science) on 20.04.2017 and as the name of the writ-petitioner was included in the new list dated 20.04.2017, he thought that there would be no contempt of court. However, the Ministry of Science and Technology in its turn appointed the contemnor-respondent no. 4 as Member of Bio-science Division of the Bangladesh Atomic Energy Commission on current charge. As the contemnor-respondent no. 2 has tendered an unconditional apology to this Court, he seeks his exoneration from this contempt proceeding.

The contemnor-respondent no. 4 Dr. Raihan Hussain has also filed an Affidavit in connection with this contempt proceeding. The long and the short of this Affidavit runs as under:

The contemnor-respondent no. 4 does not contest this Rule; but he narrates the circumstances to seek mercy of this Court and to exonerate him from the liability of commission of contempt of court. The contemnor-respondent no. 4 Dr. Raihan Hussain is the ex-Chief Medical Officer, National Institute of Nuclear Medicine and Allied Sciences, Bangladesh Atomic Energy Commission, Shahbag, Dhaka. As per notification bearing Memo No. 39.00.0000.006.12.026.16-227 dated 20.04.2017, he took current charge as Member (Bio-science) on the self-same date (20.04.2017). After performing his duties as Member, Bio-science Division of the Commission, he went on Post-Retirement Leave (PRL) on 02.05.2017 from service. The Bangladesh Atomic Energy Commission proposed the names of eight officers to the Ministry of Science and Technology for consideration for appointment to the post of Member (Bio-science) owing to administrative, executive, directorial and other emergent reasons and the contemnor-respondent no. 4 had no manner of involvement in the matter of issuance of the notification dated 20.04.2017 except that he was at the receiving end. On being appointed as Member, Bio-science Division of the Bangladesh Atomic Energy Commission on 20.04.2017, he merely performed his official duties on current charge. Since the contemnor-respondent no. 4 was appointed as Member (Bio-science) on current charge and since he performed his duties only for 12(twelve) days before going into retirement, he candidly regrets and undertakes to be cautious in future and prays that his unconditional apology may be accepted thereby exonerating him from the liability of contempt of court.

At the outset, Mr. K. M. Tanjib-ul Alam, learned Advocate appearing on behalf of the writ-petitioner, submits that all the contemnor-respondents had definite knowledge about the interim order of stay dated 31.01.2017 which was passed in the Writ Petition No. 1382 of 2017 and by giving a damn to the interim order dated 31.01.2017, the contemnor-respondent no. 4, who was admittedly junior to the writ-petitioner, was appointed to the post of Member, Bio-science Division of the Bangladesh Atomic Energy Commission on current charge on 20.04.2017 as evidenced by Annexure-‘E’ on the basis of Annexure-‘F’ to the Contempt Petition of the even date and the appointment of the contemnor-respondent no. 4 as Member (Bio-science) of the Commission by circumventing the interim order of stay dated 31.01.2017 passed in the Writ Petition No. 1382 of 2017 necessarily constitutes contempt of this Court and as such all the contemnor-respondents are liable to be punished therefor.

Mr. K. M. Tanjib-ul Alam further submits that in the facts and circumstances of the case, it transpires that the contemnor-respondents violated the interim order of stay dated 31.01.2017 passed in the Writ Petition No. 1382 of 2017 in an indirect or circuitous manner and this indirect or circuitous violation of the interim order of stay dated 31.01.2017 amounts to contempt of court as well for which they can not eschew their liability.

Mr. K. M. Tanjib-ul Alam also submits that it is a settled proposition of law that what can not be done directly can not be done obliquely or indirectly and as the contemnor-respondents violated the interim order of stay dated 31.01.2017 by issuance of the notification bearing Memo No.

39.00.0000.006.12.026.16-227 dated 20.04.2017, they must be fastened with the liability of committing contempt of court.

Mr. K. M. Tanjib-ul Alam next submits that it is the effect of the contemnors' action which is to be taken into account in deciding whether any contempt was committed or not and the Court will adjudge as to whether its order was wilfully violated or disregarded by the contemnor-respondents by way of issuance of the notification dated 20.04.2017 appointing the contemnor-respondent no. 4 to the post of Member, Bio-science Division of the Bangladesh Atomic Energy Commission on current charge.

Mr. K. M. Tanjib-ul Alam further submits that it is well-settled that there can not be both justification and apology and the two things are incompatible with each other and where the contemnor-respondent nos. 2 and 4 have professedly tendered unconditional apologies to this Court for issuance of the notification dated 20.04.2017, they can not simultaneously justify their actions in their respective Affidavits and the apologies tendered by the contemnor-respondent nos. 2 and 4 are, in effect, paper apologies.

Mr. K. M. Tanjib-ul Alam lastly submits that the contemnor-respondent no. 4, having full knowledge about the interim order of stay dated 31.01.2017 passed in the Writ Petition No. 1382 of 2017, preferred Civil Petition For Leave To Appeal No. 619 of 2017 before the Appellate Division and the Appellate Division by its order dated 23.02.2017 did not interfere with the interim order of stay dated 31.01.2017 passed by the High Court Division in the Writ Petition No. 1382 of 2017 and ultimately this contemnor-respondent no. 4 became the beneficiary of the notification dated 20.04.2017 having been appointed to the post of Member, Bio-science Division of the

Commission mala fide by way of circumventing the interim order of stay dated 31.01.2017.

In support of the above submissions, Mr. K. M. Tanjib-ul Alam refers to the cases of the Chairman Kushtia Co-operative Industrial Union Ltd...Vs...Mujibur Rahman and others, 44 DLR (AD) 219; Tahera Nargis Syed...Vs...Shamsur Rahman, Deputy Inspector General of Prisons, Dhaka Central Jail, Dhaka, 41 DLR (HCD) 508; Solaiman (Md) and others...Vs...Md. Mosharaf Hossain Khan and others, 54 DLR (HCD) 531 and M. Y. Shareef and another...Vs...The Hon'ble Judges of the High Court of Nagpur and others decided on 15.10.1954 which was downloaded from the internet.

Per contra, Mr. A. J. Mohammad Ali, learned Advocate appearing on behalf of the contemnor-respondent no. 2, submits that the contemnor-respondent no. 2, in keeping with the highest tradition of the majesty of this Court, throws himself at the mercy of this Court and tenders an unconditional apology and he does not contest the Rule; but in his Affidavit, he has narrated certain facts as background facts leading to the issuance of the Contempt Rule.

Mr. A. J. Mohammad Ali also submits that Dr. Kamila Afroj Quadir is the Chief Scientific Officer and Director of Bio-science Division of the Bangladesh Atomic Energy Commission; but her name was omitted from Annexure-'K' dated 25.01.2017 to the Writ Petition and that is why, the contemnor-respondent no. 2 thought that there would be no contempt of court if the name of the petitioner was included in a subsequent panel and accordingly by including her name, the contemnor-respondent no. 2

forwarded a panel of three officers to the Administrative Ministry, that is to say, Ministry of Science and Technology for appointment of anyone of them to the post of Member, Bio-science Division of the Commission on current charge in view of the exigency in carrying out the day-to-day functions of the Commission.

Mr. A. J. Mohammad Ali further submits that indisputably by the interim order dated 31.01.2017 passed in the Writ Petition No. 1382 of 2017, this Court stayed the operation of Annexure-‘K’ to the Writ Petition and with the interim order of stay dated 31.01.2017 in place, the status quo ante was preserved and the contemnor-respondent no. 2 did not interfere with Annexure-‘K’ to the Writ Petition in any way and the natural corollary is that the substantive appointment to the post of Member, Bio-science Division of the Bangladesh Atomic Energy Commission was put on hold and shelved.

Mr. A. J. Mohammad Ali also submits that as the Ministry of Science and Technology appointed the contemnor-respondent no. 4 to the post of Member, Bio-science Division of the Bangladesh Atomic Energy Commission on current charge on the basis of Annexure-‘F’ dated 20.04.2017 to the Contempt Petition, he complied with the order of appointment and performed his duties only for 12(twelve) days till his superannuation on 02.05.2017.

Mr. A. J. Mohammad Ali next submits that admittedly the contemnor-respondent no. 4 was not appointed to the post of Member, Bio-science Division of the Commission substantively and this appointment on current charge was a mere stop-gap arrangement for running day-to-day affairs of the Commission as evidenced by Annexure-‘E’ to the Contempt Petition.

Mr. A. J. Mohammad Ali further submits that the contemnor-respondent no. 2 did not in any way stand in the way of the interim order dated 31.01.2017 passed in the Writ Petition No. 1382 of 2017 and the Rule Nisi itself should be heard and disposed of on merit as expeditiously as possible.

Mr. A. F. Hassan Ariff, learned Advocate appearing on behalf of the contemnor-respondent no. 4, submits that it is an admitted fact that the contemnor-respondent no. 4 was appointed to the post of Member, Bio-science Division of the Bangladesh Atomic Energy Commission on current charge on 20.04.2017 and he held that post only for 12(twelve) days and went on Post-Retirement Leave (PRL) on 02.05.2017.

Mr. A. F. Hassan Ariff also submits that by Annexure-‘K’ dated 25.01.2017 to the Writ Petition, the Atomic Energy Commission invited the curriculum vitae and annual confidential reports of eight officers mentioned therein and that invitation was stayed by the interim order dated 31.01.2017 passed by the High Court Division in the Writ Petition No. 1382 of 2017 and the furnishing of curriculum vitae and annual confidential reports of those eight officers named in Annexure-‘K’ to the Writ Petition is still stayed by the interim order dated 31.01.2017.

Mr. A. F. Hassan Ariff next submits that there is no gainsaying the fact that the contemnor-respondent no. 4 is not the author of Annexures- ‘E’ and ‘F’ to the Contempt Petition, though he was a beneficiary thereof and in any event, he has tendered an unconditional apology to this Court and just by way of background facts, he has made certain averments in his Affidavit.

Mr. A. F. Hassan Ariff further submits that undeniably the name of the writ-petitioner along with the names of the contemnor-respondent no. 4 and another officer of the Commission was forwarded to the Ministry of Science and Technology for appointment of anyone of them to the post of Member (Bio-science) on current charge and the Administrative Ministry in its wisdom thought it fit and proper to appoint the contemnor-respondent no. 4 to the post of Member (Bio-science) on current charge on 20.04.2017 and accordingly he was appointed thereto and this appointment on current charge has nothing to do with the Rule Nisi issued and the interim order dated 31.01.2017 passed by the High Court Division in the Writ Petition No. 1382 of 2017 and at the most, the subsequent developments predicated upon Annexures- 'E' and 'F' to the Contempt Petition might be the subject matter of another Writ Petition to be filed by the writ-petitioner.

Mr. A. F. Hassan Ariff lastly submits that had the writ-petitioner, instead of the contemnor-respondent no. 4, been appointed as Member, Bio-science Division of the Commission on current charge on 20.04.2017, in all probability, she would not have come before this Court to initiate this contempt proceeding and as she was not given the current charge of Member, Bio-science Division of the Commission, she felt mortified and approached this Court with the instant Contempt Petition.

We have heard the submissions of the learned Advocate Mr. K. M. Tanjib-ul Alam and the counter-submissions of the learned Advocates Mr. A. J. Mohammad Ali and Mr. A. F. Hassan Ariff and perused the Contempt Petition and relevant Annexures annexed thereto.

It is an indisputable fact that in the Writ Petition No. 1382 of 2017, this Court issued a Rule Nisi calling upon the respondents to show cause as to why the Memo No. 39.01.0000.218.11.001.16-103 dated 25.01.2017 (Annexure-‘K’ to the Writ Petition) purportedly proposing the names of eight officers of the Bangladesh Atomic Energy Commission to the Ministry of Science and Technology for consideration for appointment to the post of Member (Bio-science) omitting/excluding the name of the petitioner in violation of seniority should not be declared to be without lawful authority and of no legal effect and at the time of issuance of the Rule Nisi on 31.01.2017, this Court stayed the operation of the impugned Memo No. 39.01.0000.218.11.001.16-103 dated 25.01.2017 for a period of 3(three) months and subsequently the period of stay was extended from time to time and that interim order of stay is still in force.

Undeniably during the subsistence of the interim order of stay dated 31.01.2017, the contemnor-respondents issued Annexure- ‘E’ dated 20.04.2017 on the basis of Annexure-‘F’ of the even date. From a bare reading of Annexure-‘F’ to the Contempt Petition, it transpires that the Bangladesh Atomic Energy Commission forwarded the names of the writ-petitioner Dr. Kamila Afroj Quadir, contemnor-respondent no. 4 Dr. Raihan Hussain and one Dr. Gazi Abul Hossain to the Ministry of Science and Technology on 20.04.2017 and on the self-same date (20.04.2017), the Ministry made the notification bearing Memo No. 39.00.0000.006.12.026.16-227 giving current charge of the post of Member, Bio-science Division of the Commission, to the contemnor-respondent no. 4. This being the factual backdrop, a pertinent question arises: was the notification bearing Memo No.

39.00.0000.006.12.026.16-227 dated 20.04.2017 issued in wilful violation and disregard of the interim order of stay dated 31.01.2017 passed in the Writ Petition No. 1382 of 2017? As a matter of fact, this is the core question for our decision in this proceeding.

Admittedly the writ-petitioner is senior to the contemnor-respondent no. 4. But her name was not mentioned along with eight others in Annexure-‘K’ to the Writ Petition inviting their respective bio-data for promotion to the post of Member, Bio-science Division of the Commission. However, that question can be gone into on merit at the time of hearing and disposal of the Writ Petition No. 1382 of 2017.

By the interim order dated 31.01.2017 passed in the Writ Petition No. 1382 of 2017, the invitation of the bio-data of eight officers named in Annexure-‘K’ to the Writ Petition was stayed. Because of the stay order dated 31.01.2017, those eight officers, it is undisputed, could not furnish their bio-data, curriculum vitae, annual confidential reports etc. to the Chairman of the Commission. Given this scenario, the contemnor-respondents do not appear to have violated the interim order of stay dated 31.01.2017 from a legalistic point of view.

Be that as it may, Mr. K. M. Tanjib-ul Alam is very much emphatic on the question that the contemnor-respondents violated the interim order of stay dated 31.01.2017 in a circuitous or indirect manner. Now let us see whether the contemnor-respondents wilfully violated and disregarded the interim order of stay dated 31.01.2017 indirectly as argued by Mr. K. M. Tanjib-ul Alam. According to the Affidavit of the contemnor-respondent no. 2, he forwarded the name of the writ-petitioner along with the names of two others including

the name of the contemnor-respondent no. 4 to the Ministry of Science and Technology for appointing anyone of them as Member, Bio-science Division of the Commission on current charge. It is also in the Affidavit of the contemnor-respondent no. 2 that he was labouring under the impression that as the name of the writ-petitioner was included in Annexure-‘F’ to the Contempt Petition, there would be no contempt of court. This seems to be a candid admission on the part of the contemnor-respondent no. 2 Dr. Md. Manzurul Haque.

As to the contemnor-respondent no. 4 Dr. Raihan Hussain, he was the beneficiary of the notification bearing Memo No. 39.00.0000.006.12.026.16-227 dated 20.04.2017 issued by the Ministry of Science and Technology. Indisputably he filed Civil Petition For Leave To Appeal No. 619 of 2017 against the interim order of stay dated 31.01.2017 passed by the High Court Division before the Appellate Division. Having been unsuccessful in the Appellate Division, according to Mr. K. M. Tanjib-ul Alam, a contrivance was devised by the contemnor-respondents in order to appoint the contemnor-respondent no. 4 to the post of Member, Bio-science Division of the Commission on current charge and accordingly the contemnor-respondent no. 4 was appointed thereto. What is conspicuous in this regard is that Annexure-‘F’ to the Contempt Petition was forwarded to the Ministry of Science and Technology on 20.04.2017 and Annexure-‘E’ to the Contempt Petition was issued on the self-same date (20.04.2017) and the contemnor-respondent no. 4 joined the post of Member, Bio-science Division of the Commission on current charge on that date as well (20.04.2017). We think, there was unusual hurry in the matter of giving current charge of the post of Member, Bio-

science Division of the Commission to the contemnor-respondent no. 4 by the authorities concerned. Broadly speaking, although the appointment of the contemnor-respondent no. 4 to the post of Member, Bio-science Division on current charge on 20.04.2017 does not contravene or violate the interim order of stay dated 31.01.2017; but in all fairness, all the contemnor-respondents should have waited for the result of the Rule Nisi which has been pending before the High Court Division for adjudication. The cause of unusual hurry on the part of the authorities concerned in appointing the contemnor-respondent no. 4 to the post of Member, Bio-science Division of the Bangladesh Atomic Energy Commission on current charge, as we see it, is cryptic, inexplicable and somewhat mysterious. However, one of the possible reasons for this unusual hurry might be the impending superannuation of the contemnor-respondent no. 4 from the service of the Commission.

Both the contemnor-respondent nos. 2 and 4 have tendered unconditional apologies before this Court and they have also categorically, unequivocally and in clear terms stated in their respective Affidavits that they are not willing to contest the Rule of Contempt of Court. It is an indubitable fact that by Annexure-‘E’ to the Contempt Petition, the contemnor-respondent no. 4 was not appointed to the substantive post of Member, Bio-science Division of the Commission. As this was not a substantive appointment of the contemnor-respondent no. 4 to the post of Member, Bio-science Division on promotion, he, or for that matter, the other contemnor-respondents can not, in our view, be fastened with the liability of commission of contempt of court, albeit the conduct of the contemnor-respondent nos. 2 and 4, in particular, appears to be unfair. The sky would not have fallen down upon their heads,

had they waited for the result of the Rule Nisi which is admittedly pending for adjudication.

Anyway, the contention of Mr. A. F. Hassan Ariff that admittedly the writ-petitioner was one of the persons in Annexure-‘F’ to the Contempt Petition which was forwarded to the Ministry of Science and Technology and had she been appointed to the post of Member, Bio-science Division of the Commission on current charge, she would not have initiated this contempt proceeding can not be brushed aside altogether.

We also find substance in the submission of Mr. A. F. Hassan Ariff that the issuance of Annexures- ‘E’ and ‘F’ to the Contempt Petition could have been the subject matter of another Writ Petition; but instead of filing another Writ Petition, the writ-petitioner has come up with the present contempt proceeding with an oblique motive.

The argument of Mr. A. J. Mohammad Ali that for running day-to-day affairs of the Bangladesh Atomic Energy Commission, the appointment of the contemnor-respondent no. 4 as Member, Bio-science Division on current charge as evidenced by Annexure-‘E’ to the Contempt Petition was a mere stop-gap arrangement does not seem to be forceful and weighty in the facts and circumstances of the case.

We are in full agreement with the ‘ratios’ that have been enunciated in the cases of the Chairman Kushtia Co-operative Industrial Union Ltd...Vs...Mujibur Rahman and others, 44 DLR (AD) 219; Tahera Nargis Syed...Vs...Shamsur Rahman, Deputy Inspector General of Prisons, Dhaka Central Jail, Dhaka, 41 DLR (HCD) 508; Solaiman (Md) and others...Vs...Md. Mosharaf Hossain Khan and others, 54 DLR (HCD) 531

and M. Y. Shareef and another...Vs...The Hon'ble Judges of the High Court of Nagpur and others decided on 15.10.1954 which was downloaded from the internet. But the facts and circumstances of the instant case are distinguishable from those of the cases cited above. In this perspective, those 'ratios' have no manner of application to the case before us.

What we are driving at boils down to this: both the contemnor-respondent nos. 2 and 4 have stated in unmistakable terms in their respective Affidavits that they are not willing to contest the Contempt Rule and as such they have tendered unconditional apologies to this Court being full of remorse and contrition. In their Affidavits, they have just narrated the background facts leading to the issuance of the Rule of Contempt of Court. This being the state of affairs, we are not impressed by the submission of Mr. K. M. Tanjib-ul Alam that on the one hand, the contemnor-respondent nos. 2 and 4 are seeking apologies from this Court and on the other hand, they are justifying their actions. Precisely speaking, the Affidavits of the contemnor-respondent nos. 2 and 4 are not intended to justify their actions; rather their unconditional and unqualified apologies are writ large on their Affidavits. So their apologies are not paper apologies at all. Against this backdrop, we are inclined to accept the unconditional and unqualified apologies tendered by the contemnor-respondent nos. 2 and 4.

As there was no wilful disregard or violation of the interim order of stay dated 31.01.2017 passed in the Writ Petition No. 1382 of 2017 either directly or indirectly, the other non-contesting contemnor-respondents can not be saddled with the liability of commission of the contempt of court too.

From the foregoing discussions and regard being had to the facts and circumstances of the case, we find no merit in the Rule. The Rule, therefore, fails.

Accordingly, the Rule is discharged.

J. B. M. HASSAN, J:

I agree.