

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)
WRIT PETITION NO. 6290 OF 2017.**

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Aziz Co-operative Commerce and Finance
Credit Society Ltd. represented by Tajul Islam

.....**Petitioner.**

-Versus-

Bangladesh, represented by the Secretary, Ministry of Home
Affairs, Bangladesh Secretariat, Ramna, Dhaka-1000 and others.

..... **Respondents.**

Mr. Muhammad Tarikul Islam, Advocate

..... **For the Petitioner.**

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

..... **For the Respondents.**

Mr. Ajmalul Hossain Q.C, Senior Advocate with
Mr. Khalid Mohammad Saifullah, Advocate and
Mr. Md. Aziz Ullah Emon, Advocate

.... **For the Respondent No.06 (Bangladesh Bank).**

Mr. Kazi Ershadul Alam, Advocate,

..... **For the Respondent No.16.**

Mr. Md. Khurshid Alam Khan, Advocate,

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

Present:

Mr. Justice Md. Nazrul Islam Talukder

And

Mr. Justice Mohi Uddin Shamim

Heard on: 14.02.2021 and Judgment on : 24.02.2021

Md. Nazrul Islam Talukder, J:

On an application under Article 102 of the
Constitution of the Peoples' Republic of

Bangladesh, this Rule Nisi, at the instance of the writ petitioner, was issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents not to entertain any case against the petitioner without any sanction given by the Registrar, office of the Directorate of Co-operative or without sanction of any delegated person by the Registrar in pursuance of Section 86(2) of the Samabaya Samity Ain, 2001 and order vide Memo No.135(71) dated 23.09.2013 issued by the Registrar, Office of the Directorate of Co-operatives and not to harass the petitioner by the Bangladesh Bank and not to publish/telecast any negative news against the Aziz Co-operative Commerce and Finance Credit Society Ltd. without any inquiry and why the action of the respondents in taking punitive actions against the petitioner, should not be declared illegal and without

lawful authority and is of no legal effect and/or pass such other or further order orders as to this Court may seem fit and proper.

It may be noted that this court at the time of issuance of the Rule by its ad-interim order directed the respondents not to entertain any case against the petitioner without any sanction given by the Registrar, office of the Directorate of Co-operative or without sanction of any delegated person by the Registrar in pursuance of section 86(2) of the Samabaya Samity Ain, 2001 and other vide Memo No.135(71) dated 23.09.2013 issued by the Registrar, Office of the Directorate of Co-operatives and not to harass the petitioner by the Bangladesh Bank and not to publish/telecast any negative news against the Aziz Co-operative Commerce and Finance Credit Society

Ltd without any inquiry for a period of 6(six) months from date.

The Rule is made returnable within 3(three) weeks from date.

Today this matter has appeared in the list for delivery of judgment and order.

When the matter is taken up for delivery of judgment, Mr. Muhammad Tarikul Islam, the learned Advocate appearing for the writ petitioner, submits that this court, by ad-interim order dated 08.05.2017, directed the respondents not to entertain any case against the petitioner without any sanction given by the Registrar, office of the Directorate of Co-operative or without sanction of any delegated person by the Registrar in pursuance of section 86(2) of the Samabaya Samity Ain, 2001 and other vide Memo No.135(71) dated 23.09.2013 issued by the Registrar,

Office of the Directorate of Co-operatives and not to harass the petitioner by the Bangladesh Bank and not to publish/telecast any negative news against the Aziz Co-operative Commerce and Finance Credit Society Ltd without any inquiry; now he has got instruction from his client not to proceed with the Rule, and prays for discharging the Rule for non-prosecution.

On the other hand, Mr. Ajmalul Hossain Q.C, the learned Senior Advocate along with Mr. Khalid Mohammad Saifullah, the learned Advocate appearing on behalf of the Respondent No. 06 (Bangladesh Bank), submits that Bangladesh Bank being the central bank and apex regulatory body for the country's monetary and financial system was established in Dhaka as a body corporate vide the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972) with effect from 16th December, 1971; at present it

has ten offices located at Motijheel, Sadarghat, Chittagong, Khulna, Bogra, Rajshahi, Sylhet, Barisal, Rangpur and Mymensingh in Bangladesh; Bangladesh Bank performs all the core functions of a typical monetary and financial sector regulator and a number of other non-core functions; the major functional areas include: (1) Formulation and implementation of monetary and credit policies, 2) Regulation and supervision of banks and non-bank financial institutions, promotion and development of domestic financial markets, 3) Management of the country's international reserves, 4) Issuance of currency notes, 5) Regulation and supervision of the payment system, 6) Acting as banker to the government, 7) Money Laundering Prevention, 8) Collection and furnishing of credit information, 9) Implementation of the Foreign exchange regulation Act, 10) Managing a

Deposit Insurance Scheme; the petitioner is a body corporate in Bangladesh under the name Aziz Co-operative Commerce and Finance Credit Society Ltd. and has been carrying on business since 1984; the society was registered under the Bengal Co-operative Societies Act, 1940 on 13.11.1984; the area of operation of the society is countrywide in accordance with the order dated 08.08.2012 issued by the Registrar, Office of the Directorate of Co-operative; admittedly the society has 26 branches and 71 service centers in different parts of Bangladesh which are not permitted as per the Samabaya Samiti Ain, 2001 (amended in 2013).

He next submits that on 22.01.2017 one Md. Nuruzzaman of Munshipara, Kurigram wrote a letter along with a pamphlet to the Governor, Bangladesh Bank and a copy of the same was sent to the Hon'ble

Finance Minister, Ministry of Finance stating inter alia that Aziz Co-operative Commerce and Finance Society Ltd. without any approval surreptitiously carrying on general banking activities throughout the country by opening 110 branches; by alluring the depositors Aziz Co-operative Commerce and Finance Society Ltd.'s branches are taking fixed deposits and conversely the petitioner is giving loan on 18% interest in those branches; the people were assured that they would be paid double benefit within 54 months i.e. by depositing 1,00,000/- (Taka one lac) only they will get 2,00,000/- (Taka two lac) only; by this way the petitioner's society is collecting a huge amount of money from the mass people and doing general banking illegally.

He then submits that on 06.02.2017 the Deputy Secretary of Ministry of Finance requested to take

appropriate action to stop general banking of Aziz Co-operative Commerce and Finance Society Ltd; then, on 28.02.2017 the General Manager, Bangladesh Bank vide Memo No.BRPD/Neeti-4/770/2017-1234 wrote a letter to the Secretary, Ministry of Finance regarding the action against the petitioner; on 28.02.2017 the Joint Director of Bangladesh Bank wrote a letter to the department of Co-operatives to take legal action by stopping banking activities of the Aziz Co-operative Commerce and Finance Society Ltd; then on 01.03.2017 the Bank and Financial Department of Ministry of Finance wrote a letter to the Governor to stop general banking activities of Aziz Co-operative Commerce and Finance Society Ltd; he was also requested to publish urgent publication regarding the same.

He candidly submits that Bangladesh Bank, Rangpur Office conducted a spot inquiry on 19.03.2017 and 20.03.2017 at Aziz Co-operative Commerce and Finance Society Ltd., Stationg Road, Sabera Mansion, (Adjacent to Salek Market), 1st floor, Rangpur and found that the petitioner's credit society is carrying on banking business and using its name i.e. ACCF Bank Ltd. in its cheque book, deposit slip, voucher, signboard and banners; the inquiry report was submitted on 21.03.2017; thereafter, on 22.03.2017 Deputy Director, Rangpur Office of Bangladesh Bank sent the inquiry report to the General Manager, Financial Integrity and Customer Services Department, Bangladesh Bank, Head Office, Dhaka.

He additionally submits that on 12.03.2017 Financial Integrity and Customer Services of

Bangladesh Bank, Head Office, Dhaka also conducted an inquiry at the Main Office of the petitioner and found the petitioner's credit society breaching the law by doing general banking illegally; on 27.03.2017 Deputy Registrar (Credit), Department of Co-operatives vide Memo No.cre:47 .61. 0000. 025. 40. 013. 17-22 informed Bangladesh Bank that Aziz Co-operative Commerce and Finance Society Ltd. has been carrying on General Banking activities by infringing Sections 23(ka)(1),23(kha)(1) and 26(1) of the Samabaya Samity Ain, 2001; on 17.04.2017 vide Memo No.53.00.0000.311.99.003.17-286, Deputy Secretary, Ministry of Finance, requested Bangladesh Bank to General Banking activities of Aziz Co-operative Commerce and Finance Society Ltd. as it is infringing the provision of the Samabaya Samity Ain, 2001.

He points out that as per Section 31 of the Banking Companies Act, 1991, no individual, institution or company shall carry on banking business in Bangladesh without holding a licence issued by the Bangladesh Bank in this behalf; but, Aziz Co-operative Commerce and Finance Society Ltd. has been carrying on banking business without taking any approval from Bangladesh Bank which is illegal and as such, the Rule issued earlier is liable to be discharged.

He lastly submits that Aziz Co-operative Commerce and Finance Credit Society Ltd. has been carrying on banking business by opening 26 branches and 71 service centers in different parts of Bangladesh which are clear contravention of Section 23Ka(1) of the Samabaya Samity Ain, 2001 which states as under:-

২৩ক। (১) কোন সমবায় সমিতি উহার কার্যক্রম পরিচালনার জন্য কোন শাখা অফিস খুলিতে পারিবে না, তবে এই বিধান কার্যকর হইবার পূর্বে কোন অনুমোদিত শাখা অফিস থাকিলে, উহা এই বিধান কার্যকর হইবার ৬(ছয়) মাসের মধ্যে স্বয়ংক্রিয়ভাবে মূল সমিতির সাথে একীভূত হইবে অথবা সংশ্লিষ্ট সমবায় সমিতির আবেদনক্রমে উক্ত শাখা অফিস প্রাথমিক সমবায় সমিতি হিসাবে নিবন্ধিত হইতে পারিবে।

(২) এই আইনের অধীন নিবন্ধিত সমবায় ভূমি উন্নয়ন ব্যাংক, কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংক, কেন্দ্রীয় সমবায় ব্যাংক এবং বাংলাদেশ সমবায় ব্যাংক ব্যতীত কোন প্রাথমিক সমবায় সমিতি, কেন্দ্রীয় সমবায় সমিতি বা জাতীয় সমবায় সমিতি উহার নামের সহিত ব্যাংক শব্দ ব্যবহার করিতে পারিবে না, তবে কোন সমবায় সমিতি এইরূপ শব্দযুক্ত নামে নিবন্ধিত হইয়া থাকিলে এই বিধান কার্যকর হইবার ৩(তিন) মাসের মধ্যে উহার নাম সংশোধন করিয়া নিবন্ধককে অবহিত করিতে হইবে।

(৩) কোন ব্যক্তি এই ধারার কোন বিধান লঙ্ঘন করিলে অনধিক ৭(সাত) বৎসর কারাদণ্ড বা অনূন্য ১০ (দশ) লক্ষ টাকা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডনীয় হইবেন।

Moreover, Section 9 of the Ain, 2013 is as follows :

৯। (১) এই আইনের অধীন সমবায় সমিতি হিসাবে নিবন্ধিত না হইলে কোন ব্যক্তি, ব্যক্তিসংঘ, সংগঠন বা সমিতি উহার নামের অংশ হিসাবে সমবায় বা Co-operative শব্দ ব্যবহার করিবে না।

(২) সমিতির নিবন্ধিত নাম ব্যতীত সমিতির সাইন বোর্ড, বিল বোর্ড বা প্রচারপত্রে অন্য কোন নাম বা শব্দ ব্যবহার করা যাইবে না।

(৩) নিবন্ধিত বা নিবন্ধনের জন্য প্রস্তুত কোন সমবায় সমিতির নামের সাথে কমার্স ব্যাংক, ইনভেস্টমেন্ট কমার্শিয়াল ব্যাংক, লীজিং, ফাইন্যান্সিং বা সমার্থক শব্দ ব্যবহার করা যাইবে না এবং কোন সমবায় সমিতি এইরূপ শব্দযুক্ত নামে ইতোমধ্যে নিবন্ধিত হইয়া থাকিলে এই বিধান কার্যকর হইবার ৩(তিন) মাসের মধ্যে উহার নাম সংশোধন করিয়া নিবন্ধককে অবহিত করিতে হইবে।

(৪) কোন ব্যক্তি এই ধারার কোন বিধান লঙ্ঘন করিলে অনধিক ৭(সাত) বৎসর কারাদণ্ড বা অনূ্যন ১০ (দশ) লক্ষ টাকা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডনীয় হইবেন।, but at the instance of the petitioner, the respondents, by the ad-interim of this

court, were debarred from entertaining any case against the petitioner and from taking any legal steps against him and under the aforesaid circumstances, the prayer for non-prosecution of the Rule of the petitioner is not accepted at this stage and in case of allowing the prayer of the petitioner, exemplary costs may be imposed upon the petitioner.

Mr. Kazi Ershadul Alam, the learned Advocate appearing on behalf of the Respondent No.16, has adopted the submissions made by the learned Advocate for the Respondents No.6.

Ms. Mahjabin Rabbani, the learned Assistant Attorney-General appearing for the Respondent No.16 submits that the petitioner's society is being regulated using with the word commerce and finance credit and society; to collect the deposit the petitioner published profitable advertisement in different ways;

the petitioner received savings from members of the co-operative society and non members; the petitioner had no plan to invest the deposited money; the petitioner did not invest the money in productive way rather they had expensed the save money in unproductive sector; they did not disburse loan under Sections 70-74 of the Samabay Samity Bidhimala 2004; on the contrary they were engaged with corruption and misappropriation of society's fund; besides, many dishonest and fraudulent management of co-operative societies i.e the Destiny, Ideal, Al-Aksa, maxim, Sun and Star decent co-operative societies went away taking the deposited money; for this reason, Bangladesh Bank as well as the Directorate of co-operative made publications in newspaper so that general members of the society could get rescued from irreparable loss.

She next submits that there are some ambiguities in section 13 of Samabaya Samity Ain, 2001; formerly, the co-operative society could get savings from the non-member of the co-operative society and by getting chance to collect money from the non-members, some dishonest co-operators set up co-operative societies, open branches and finally run away with the deposit money; to remove this problem the Parliament has amended the Samabaya Samity Ain in 2013; the amendment has given opportunity to the co-operators as well the stakeholder; at the same time, the process of registration has been transparent and friendly; hence the Government enacted laws as well as amended the same for the betterment of mass people of the country to get rid of the dishonesty of the co-operators from this sector.

Mr. Md. Khurshid Alam Khan, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that the petitioner's society published profitable advertisement in different ways by using with the name "commerce and finance credit society"; mass people think the society as like as bank and they were cheated day after day by the petitioner's co-operative society; hence the respondent no. 6 (Bangladesh Bank) and respondent no. 16 published the notice to warn the people, so that the general members could get rescued from imminent loss.

He next submits that ACC and BFIU have the right as per law to make inquiry and ask the petitioner to co-operate with them; there is no legal impediment to make inquiry into the society under the Money Laundering Protirodh Ain, 2012 (as amended in

2015), but the petitioner did not co-operate with the respondents rather petitioner filed the writ petition and obtained the direction from this court so that the respondents could not take any legal steps against him.

He candidly submits that the co-operative society is not a financial sector; it is a non financial organization and it is also a corporate body; but the petitioner collected money from members and non-members by giving promises of benefits at the rate of 20-25% interest which is totally violation of the Co-operative Societies Act as well as Bangladesh Bank Circulars; in this situation when the petitioner could not refund the money to the depositors, the depositors filed many cases against the petitioner all over Bangladesh by themselves.

He lastly submits that though the petitioner is a non financial co-operative society, even then, it has 26 branches and 71 service centres in different parts of Bangladesh and they act as like as financial bank which is the violation of the Sections 23(Ka)(1),(2) and (3) of the Samabay Samity Ain, 2001; hence considering the wellbeing of mass people, the respondents took initiatives to take legal actions against the petitioner but at the instance of the petitioner, the respondents, by the ad-interim of this court, were debarred from entertaining any case against the petitioner and from taking any legal steps against him and under the aforesaid circumstances, the prayer for non-prosecution of the Rule of the petitioner is not accepted at this stage and in case of allowing the prayer of the petitioner, exemplary costs

may be imposed upon the petitioner and as such, the Rule is liable to be discharged for the ends of justice.

We have gone through the application filed under Article 102 of the Constitution by the petitioner along with the affidavit-in-oppositions and applications filed by the parties and perused the materials, statements and grounds as set out therein. We have also heard the learned Advocates for the respective parties and considered their submissions to the best of our wit and wisdom.

It appears from the records that the co-operative society is not a financial sector, it is a non financial organization and it is also a corporate body, but the petitioner collected money from members and non-members by giving promises of benefits at the rate of 20-25% interest which is totally violation of the Co-operative Societies Act. Further, Aziz Co-operative

Commerce and Finance Credit Society Ltd. has been carrying on banking businesses by opening 26 branches and 71 service centers in different parts of Bangladesh which are clear contravention of Section 23Ka(1) of the Samabaya Samity Ain, 2001.

The contents of the submissions of the respondents is that the petitioner filed the writ petition and obtained a direction in a very cunning way only to frustrate the functions of the Durnity Damon Commission as well as Bangladesh Bank and BFIU with an ulterior motive making a vague prayer “not to entertain any case” which is virtually frustrated the jurisdiction of the Durnity Damon Commission and BFIU. This type of writ petition is not maintainable and it is a misconceived one and it is not tenable in writ jurisdiction and since 2017, the matter is pending with a direction upon the respondents debarring them

from entertaining any case against the petitioner and from taking any legal steps against him for the respondents could not take any legal steps against the petitioner, which has caused serious prejudices to the functions of the respondents since the mass people of the country suffered and incurred a huge financial loss because of the petitioner and for this reason, exemplary costs may be imposed upon the petitioner since along with the above matters, dealing with this sort of writ petition is the wastage of valuable time of the court.

It further appears that the Bangladesh Bank is the central bank of the country and the apex regulatory body for the monetary and financial transactions/systems. Moreover, the BFIU constituted under the Act of 2015 is the competent authority to inquire and ask the petitioner's functions of the co-

operative society. Question of sanction by the Register does not arise at all because no case has yet been filed and the Register has no authority to restrain the functions of the Durnity Damon Commission as well as the BFIU.

Moreover, in the prayer of the writ petition “not to harass the petitioner by the Bangladesh Bank and not to publish/telecast any negative news against the Aziz Co-operative Commerce and Finance Credit Society Ltd. without any inquiry” is contrary to law and this is an ulterior motive of the writ petitioner.

Nowadays, so many people have been seriously prejudiced by the act of the society because it is not an financial organization; it is merely a corporate body but the writ petitioner’s society in the name of the collecting profits, as like as Destiny from the large number of people acted fraud upon the mass people

and violated the law, particularly co-operative societies act as well as various Circulars/Rules of Bangladesh Bank and BFIU.

Moreover, the petitioner society failed to refund the money of the depositors and the aggrieved persons filed many cases against the society in the country.

In the facts and circumstances, we are of the opinion that this is a fit case for exemplary costs because since 2017, by virtue of an ad-interim direction, they enjoyed the privileges of the writ petition and direction and the Durnity Damon Commission and the BFIU and other respondents were restrained by a direction passed by this court from entertaining any case against the petitioner and from taking any legal steps against him.

The filing of this sort of cases before this court is the wastage of the valuable time of the court and it is also a wastage of money of the public exchequer.

Now it has become a new fashion and device of the petitioner through the learned Advocate to make a prayer for rejection of the Rule being non-prosecuted when the petitioner apprehends that the Rule will be discharged on merit of the case and they will not get fruitful result through the writ petition.

This sort of practice is an act of fraud in the name of filing writ petition before the highest court of the country which cannot be tolerated and hence the exemplary costs may be imposed upon the petitioner.

Having considered all the facts and circumstances of the case, the submissions advanced by the learned Advocates for the respective respondents and the submissions and prayer made by

the learned Advocate for the petitioner, this Rule is discharged for non-prosecution with a costs of Tk.10,00,000/- (ten lac).

The petitioner is directed to deposit the costs of Tk. 10,00,000 (ten lac) before the Bangladesh Bank through treasury challan on or before 30.08.2022 positively, failing which the costs will be realized in accordance with law and the petitioner is further directed to submit a copy of the treasury challan showing deposit of costs to the Registrar, Supreme Court of Bangladesh, High Court Division, Dhaka by way of affidavit as early as possible after making payment.

The order of direction granted at the time of issuance of Rule stands vacated.

The respondents are directed to take appropriate legal steps against the petitioner if required in accordance with law.

Let a copy of this judgment and order be communicated to the Chairman, Durnity Daman Commission, Governor, Bangladesh Bank and Head of BFIU and other respondents for their information and necessary action.

Mohi Uddin Shamim, J:

I agree.