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

WRIT PETITION NO. 12861 OF 2017.

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. Rumman Ali,
..... Petitioner.
-Versus-
Bangladesh and others.
..... Respondents.

Mrs. Razia Sultana, Advocate
..... For the Petitioner.

Mr. Anisul Hasan, Advocate
..... For the Respondent No. 5.

Mr.Akhtar Hossain Md. Abdul Wahab, D.A.G. with
Mr. Al Faishal Shiddique, DAG
Mr. Rakib Hossain, AAG
Mr. Golam Rajib, AAG and
Md. Fuad Hasan, AAG
..... For the Respondents.

Present:
Mr. Justice Md. Toufiq Inam
And
Mr. Justice Mahmud Hasan

Heard On: 05.11.2026, 11.11.2026 and

Judgment Delivered On: 15.11.2026.

Md. Toufiq Inam, J:

This Rule Nisi, upon an application under Article 102 of the Constitution of the People's Republic of Bangladesh, was issued

calling upon the respondents to show cause as to why the initiation of the proceedings in Electricity Case No. 29 of 2016 (Annexure-A), pending before the Electricity Court, BPDB, Rajshahi Zone, Rajshahi, against the petitioner, without a written complaint by an officer authorised by the Bangladesh Energy Regulatory Commission (BERC), should not be declared to have been initiated in violation of Section 47 of the Bangladesh Energy Regulatory Commission Act, 2003, and/or pass such other or further order or orders as to this Court may seem fit and proper.

The case of the petitioner, in brief, is that he is the sole proprietor of M/S Mandol Rice and Food Industries Ltd., situated at Mokrompur Bridge, Rohonpur, Gomostapur, Chapainawabganj, engaged in rice production with approximately 300 workers. The petitioner claims to be a bona fide industrial consumer of the respondent No. 3, having regularly paid electricity bills under Account No. HT-07, Consumer No. 62801811 and Meter No. 05096230, and was recognised as the best industrial consumer on three occasions. The electricity meter was kept in a secured meter room, accessible only to the authorised meter reader of the respondent No. 3. However, on 16.05.2016, a team of officials of the respondent No. 3 visited his premises, seized the meter and security key, alleging illegal interference with the meter, and disconnected the electricity supply. On the same day, a case under Sections 39A and 40A of the Electricity Act, 1910, was instituted against him, being Electricity Case No. 29 of 2016, alleging misappropriation of Government revenue amounting to approximately Tk. 1,50,00,000/- through unauthorised consumption of electricity.

The principal contention of the petitioner is that Section 47 of the Bangladesh Energy Regulatory Commission Act, 2003 (hereinafter referred to as the BERC Act, 2003) mandates that no Court shall take cognizance of an offence under the said Act except upon a written complaint made by an officer authorised by the Commission through a general or special order in writing. Since no such authorised complaint was made, the initiation of Electricity Case No. 29 of 2016 is allegedly without lawful authority. He further relies upon Section 3 of the BERC Act, 2003, contending that the said Act has overriding effect over other laws and, therefore, the respondents could not bypass the mandatory requirement of Section 47 by directly instituting the proceedings before the Electricity Court.

It is further stated that, on 18.05.2017, the respondent No. 4 submitted a supplementary complaint claiming Tk. 96,57,403/- as compensation for the alleged loss of electricity, based on a report prepared by a committee constituted by the Chief Engineer, Distribution North Zone, BPDB, Rajshahi. The petitioner claims that he was compelled to make several payments towards the alleged liability and that, by an order dated 18.07.2017, the respondent No. 2 directed him to deposit a further Tk. 25,00,000/- with the respondent No. 3, failing which his bail might be cancelled. The petitioner contends that the imposition of such a substantial financial liability is without lawful authority, particularly when Sections 39A and 40A of the Electricity Act, 1910, prescribe specific punishments for the alleged offences. Accordingly, he has challenged the legality of the initiation and continuation of the proceedings.

Mrs. Razia Sultana, learned Advocate appearing for the petitioner, submits that the initiation of Electricity Case No. 29 of 2016 under Sections 39A and 40A of the Electricity Act, 1910, without a written complaint by an officer authorised by the Bangladesh Energy Regulatory Commission (BERC), is in clear violation of the mandatory provision of Section 47 of the BERC Act, 2003. She further submits that, in view of the overriding effect of Section 3 of the said Act, the respondents cannot bypass the statutory requirement by directly instituting the proceedings before the Electricity Court. She also contends that the demand of Tk. 96,57,403/- as compensation, without lawful authority, is arbitrary and unsustainable. Accordingly, he prays for making the Rule absolute.

Mr. Anisul Hasan, learned Advocate appearing for the respondent No. 5, submits that the petitioner's reliance upon Section 47 of the BERCAct, 2003, is misconceived, as the proceedings in Electricity Case No. 29 of 2016 were instituted under Sections 39A and 40A of the Electricity Act, 1910. He contends that Sections 44 and 50 of the Electricity Act, 1910, read with the relevant provisions of the BERC Act, 2003, empower the authorised officers of the concerned electricity licensee to institute such proceedings without requiring a separate complaint from an officer authorised by the Commission. He further submits that the alleged loss of electricity was assessed in accordance with the applicable procedure and that the instant writ petition is also barred by res judicata in view of the earlier Writ Petition No. 12240 of 2017. Accordingly, he prays for discharging the Rule.

We have heard the learned Advocates for the respective parties, perused the writ petition, the supplementary affidavit, the materials available on record and the relevant provisions of law.

The core question that falls for our consideration is whether the initiation of Electricity Case No. 29 of 2016 under Sections 39A and 40A of the Electricity Act, 1910, without a written complaint by an officer authorised by BERC under Section 47 of the BERC Act, 2003, is legally sustainable. For proper appreciation of the controversy, it is necessary to examine the relevant provisions of the two enactments. Section 47 of the BERC Act, 2003, provides that no Court shall take cognizance of an offence under the said Act for trial except upon a written complaint made by an officer authorised by the Commission through a general or special order in writing.

On a plain reading of the aforesaid provision, it is evident that the requirement of an authorised written complaint is confined to offences punishable under the BERC Act, 2003. The provision does not, by its own terms, extend to every offence relating to the energy sector, irrespective of the enactment under which such offence is alleged to have been committed. In this regard, Section 44 of the BERC Act, 2003, assumes particular significance. The said provision specifically deals with theft of energy and provides, inter alia, that where a consumer commits theft of electricity or electricity-related materials, the consumer shall be punished under the Electricity Act, 1910. Thus, the legislature has expressly provided a separate statutory mechanism for dealing with offences relating to theft of electricity. Consequently, where an allegation of dishonest abstraction or unauthorised consumption of electricity is proceeded with under the relevant provisions of the Electricity Act,

1910, the procedural requirements governing such prosecution must be determined with reference to the provisions of that enactment.

In the present case, it appears from the materials on record that the allegation against the petitioner relates to the alleged removal of the electricity meter from its socket and the consequent dishonest abstraction or unauthorised consumption of electricity. On the basis of such allegation, the respondents instituted Electricity Case No. 29 of 2016 under Sections 39A and 40A of the Electricity Act, 1910.

We find that Section 50(1) of the Electricity Act, 1910, expressly provides that offences under Sections 39, 39A, 40, 40A and other specified provisions of the said Act shall be cognizable, notwithstanding anything contained in the Code of Criminal Procedure, 1898. Furthermore, Section 50(3) of the said Act specifically authorises an officer not below the rank of Assistant Engineer of the concerned licensee to institute a case for an offence under the Electricity Act, 1910, or any rule, licence or order made thereunder before the competent Court.

Therefore, the legislature has expressly conferred authority upon the designated officers of the concerned electricity licensee to institute proceedings in respect of the offences specified under the Electricity Act, 1910. Such authority is distinct from the requirement of an authorised written complaint contemplated under Section 47 of the BERC Act, 2003. In view of the aforesaid statutory scheme, we are unable to accept the contention of the learned Advocate for the petitioner that the absence of a written complaint by an officer authorised by the BERC necessarily renders the initiation of Electricity Case No. 29 of 2016 illegal.

The petitioner's further reliance upon Section 3 of the BERC Act, 2003, does not advance his case. Although the said provision gives overriding effect to the BERC Act, 2003, such overriding effect must be understood in the context of the scope and operation of the provisions of that enactment. It cannot be construed in isolation so as to render the specific provisions of the Electricity Act, 1910, inoperative in respect of offences which the legislature has expressly directed to be dealt with under that Act.Moreover, Section 48 of the BERC Act, 2003, provides that proceedings or measures taken under that Act shall be in addition to, and shall not prejudice, any action that may be taken under any other law for the time being in force. This provision further demonstrates the legislative intention that the statutory remedies and proceedings under the two enactments are not necessarily mutually exclusive.Accordingly, we find no legal basis to hold that the initiation of the criminal proceedings under the Electricity Act, 1910, was rendered unlawful merely because the complaint was not made by an officer authorised by the BERC under Section 47 of the BERC Act, 2003.

As regards the submission advanced by the learned Advocate appearing for the respondents that the present writ petition is barred by the principle of res judicata in view of the earlier Writ Petition No. 12240 of 2017, we find that the said writ petition was rejected at the admission stage as not being pressed, without issuance of any Rule Nisi. Consequently, the substantive issues raised therein were neither examined nor adjudicated upon by this Court. The essential requirement for attracting the principle of res judicata is that the matter directly and substantially in issue must have been heard and finally decided by a competent Court. Mere filing of an earlier writ

petition and its subsequent rejection as not being pressed, in the absence of any adjudication on the merits, do not satisfy that requirement. Nor can such rejection, by itself, be construed as a determination of the rights of the parties so as to preclude the petitioner from subsequently invoking the writ jurisdiction of this Court in respect of the same subject matter. We are, therefore, of the view that the present writ petition is not barred by the principle of res judicata.

We may now turn to the petitioner's contention concerning the sum of Tk. 96,57,403/- claimed by the respondents as compensation for the alleged unauthorised consumption of electricity. In this regard, it is necessary to distinguish between the criminal liability arising out of an alleged offence under the Electricity Act, 1910, and the liability, if any, to compensate the electricity authority for the loss allegedly occasioned by such unauthorised consumption. These are two distinct legal consequences and must be considered independently in accordance with the applicable statutory provisions.

The criminal liability, including the imposition of punishment by way of imprisonment or fine, must be determined strictly in accordance with the penal provisions of the relevant statute. Accordingly, the amount claimed by the respondents as compensation for the alleged loss of electricity cannot, merely by reason of such claim, be treated as a criminal fine imposable by the competent Magistrate under Sections 39A or 40A of the Electricity Act, 1910. The assessment and recovery of compensation for the alleged loss constitute a separate matter and must derive their authority from the relevant provisions of law. A claim for compensation cannot, therefore, be converted into a criminal

penalty or enforced as such in the absence of express statutory authority. However, in the circumstances, we refrain from expressing any opinion on the legality, correctness or quantum of the aforesaid claim of Tk. 96,57,403/-, and leave the question of its assessment and recovery open to be determined by the appropriate authority or forum, in accordance with law.

We are of the considered view that the requirement of lodging a written complaint by an officer authorised by the BERC under Section 47 of the BERC Act, 2003, does not govern the initiation of the present criminal proceedings under Sections 39A and 40A of the Electricity Act, 1910. Consequently, the initiation and continuation of Electricity Case No. 29 of 2016 cannot be held to be without lawful authority on the ground advanced by the petitioner.

Under sections 39A or 40A of the Electricity Act 1910, the Magistrate has no authority to determine or recover the amount claimed as compensation, nor to impose payment of such compensation, either in whole or in part, as a condition for granting bail or extending the same, unless such power is expressly conferred by law. The power to grant or extend bail in a criminal proceeding cannot be exercised as a means of enforcing a disputed monetary claim which falls outside the scope of the Magistrate's statutory jurisdiction. Any such condition, in the absence of express statutory authority, would amount to an exercise of jurisdiction not vested in the Court by law.

Therefore, the criminal proceedings initiated under Sections 39A and 40A of the Electricity Act, 1910, are not rendered unlawful for want of a complaint under Section 47 of the BERC Act, 2003;

nevertheless, the criminal jurisdiction of the learned Magistrate cannot be extended to the assessment or recovery of the alleged loss of electricity or to the enforcement of the disputed compensation claim through the imposition of a bail condition. The respondents shall remain at liberty to pursue recovery of the alleged loss before the appropriate forum in accordance with law.

In the result, the Rule Nisi is discharged.

There shall be no order as to costs.

The interim order passed earlier by this Court stands vacated.

The Court concerned is directed to proceed with the Electricity Case No. 29 of 2016 expeditiously, in accordance with law.

Office is directed to communicate this judgment at once.

(Md. Toufiq Inam)

Mahmud Hasan, J:

I agree.

(Mahmud Hasan)