

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 2915 of 2018

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. Sajedul Haque, son of late Samsul Haque of Village-Shreepur, Post Office- Saidabad, Police Station-Raipura, District: Narsingdi.

..... Petitioner.

Vs.

Government of Bangladesh and others.

..... Respondents.

Ms. Rezina Mahmud, Advocate

.....for the petitioner

Mr. Aneek R. Haque, Advocate

.... for the respondent No. 2

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Sayeda Sabina Ahmed Moli A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondent No. 1

Heard on: 02.01.2023, 09.01.2023 and judgment

on: 10.01.2023.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why the impugned order of dismissal vide memo No. সার্বীক/প্রশাঃ/প্রঃকাঃ/শ্জলা/২০১৯/২৭১৮ dated 15.11.2017 (as contained in Annexure-E) issued under the signature of the respondent No.4

dismissing the petitioner from his service under section 37(Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992 should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner is Md. Sajedul Haque, son of late Samsul Haque of Village-Shreepur, Post Office- Saidabad, Police Station- Raipura, District: Narsingdi is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Finance Bangladesh Secretariat, Shahbagh, Dhaka, the respondent No. 2 is the Managing Director, Sadharan Bima Corporation, 33 Dilkusha Commercial Area, Dhaka, respondent No. 3 is the Chairman, Sadharan Bima Corporation, 33 Dilkusha Commercial Area, Dhaka and the respondent No. 4 is the Manager (Administration), Sadharan Bima Corporation, 33 Dilkusha Commercial Area, Dhaka.

The petitioner's case inter alia is that on 30.12.2007 the petitioner was appointed as Lower Division clerk cum typist, Administration (Division), Sadharan Bima Corporation, Head Office, 33 Dilkusha Commercial Area, Dhaka on permanent basis and on 03.01.2008 the petitioner gave his joining letter to the said post. The petitioner has been performing his duties up to the satisfaction of his superior authority. That in due course on 12.03.2013 the petitioner was promoted as senior division clerk. The petitioner is also a member of the C.B.A and on 11.08.2014 was elected as treasurer of the Workers Union of Sadharan Bima Corporation. That on 09.05.2017 the respondent No. 4 served a show cause notice upon the petitioner

vides Memo No. সাবেক/প্রশাঃ/প্রঃকাঃ/কা.দ.নো/২০১৭/১১১২ dated 09.05.2017 stating certain allegation against him. The petitioner gave reply to the same denying the materials on record and also prayed for justice. Than on 17.07.2017 the respondent No. 4 served a second show cause notice upon the petitioner vides Memo No. সাবেক/প্রশাঃ/প্রঃকাঃ/শ্জলা/২০১৭/১৯১০ dated 17.07.2017 along with a charge sheet stating certain allegation against him. The petitioner on 26.07.2017 gave reply to the same denying the material allegations and also prayed for justice. That no enquiry report was annexed with the said show cause notice but the petitioner somehow managed to get a copy of the said report. According to the said report no specific allegation was found against the petitioner which may amount to misconduct. That the Enquiry Committee failed to find out the true picture of the incident and asked for further enquiry but having not done so the respondents on the basis of the said report on 15.11.2017 served the impugned dismissal order upon the petitioner. That on 29.11.2017 against the said impugned order the petitioner preferred an appeal under Section 46 of the Sadharan Bima Corporation Employment Service Rules, 1992. But till dated the respondent failed to discharge responsibility to dispose of the said appeal filed by the petitioner. That on 12.02.2018 the petitioner finding no alternative, sent notice demanding justice to the respondents to dispose of the appeal which were received in the respective offices but to no redress. Hence the petitioner was not granted any redress inspite of filing appeal whatever and consequently the petitioner was constrained to file instant writ petition.

Learned Advocate Ms. Rezina Mahmud appeared for the petitioner while learned Advocate Mr. Aneek R. Haque appeared for the respondent No. 2 and learned D.A.G Mr. Noor Us Sadik Chowdhury along with Ms. Syeda Sabina Ahmed Moli, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent No.1.

Learned Advocate Ms. Rezina Mahmud for the petitioner submits that the impugned order which is the order of dismissal dated 15.11.2017 under the signature of the respondent No. 4 dismissing the petitioner from his service under section 37 (Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992 is without lawful authority. She elaborates her submissions upon arguing that although the respondents could not prove upon enquiry that the petitioner was guilty of any offence committed within the ambits of section 37(Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992. He continues that however the respondents most arbitrarily took the decision to dismiss the petitioner from his service by using the impugned memo. Upon support of her submissions she takes us to an enquiry report which is annexed as annexure-D of the writ petition. Upon drawing upon the enquiry report she tries to persuade us that there is no prima facie evidences reflected in the enquiry report of the petitioner implying involvement in the alleged offence. He contends that however the respondents going beyond the findings of the enquiry report most arbitrarily dismissed the petitioner. Drawing upon her submissions she also contends that the offence if any at all committed fall within the purview of “লঘু দণ্ড” and not “গুরু দণ্ড” . She continues

that therefore imposing ଖୁବ୍ ଦଣ୍ଡ totally amounts to malafide and arbitrary conduct of the respondents. By way of her contention she also draws upon section rule 37 (Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992. She particularly draws our attention to section 37(Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992 which is the relevant provision of the punishment upon the petitioner that has been imposed. She argued that section 37(Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992 contemplates “ନାଶକତାମୂଳକ କାର୍ଯ୍ୟେ ଲିଖିତ” . He argues that even if throwing away the prime minister’s photo falls within an offence but however it is not an offence which might amount to ନାଶକତାମୂଳକ . She reiterates that the respondents travelled beyond the scope of Section 37(Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992 and unlawfully dismissed the petitioner from his service under Rule 38 ka (5) by way of dismissal.

Upon a query from this bench she however concedes that no procedural illegality has been committed by the respondents given that the petitioner was duly served and it was show cause notices pursuant to which the petitioner was dismissed. She however contended that although an appeal was filed by the petitioner but the respondents disposed of the appeal during pending Rule and which is annexed as annexure-3 of the supplementary affidavit. She concludes her submissions upon assertion that therefore the impugned order being unlawfully issued by the respondents is not sustainable and the Rule bears merits ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Aneek R. Haque for the respondent No. 2 vehemently opposes the Rule. At the one set of his submissions he takes us to the enquiry report and controverts the submissions of the learned Advocate for the petitioner. From the enquiry report he draws our attention to the মন্তব্য কলাম and to the তদন্ত কমিটির পর্যবেক্ষন and also to the সুপারিশ. From the তদন্ত কমিটির পর্যবেক্ষন he points out that it is reflected in the committee's observation that video footage of the petitioner was revealed which showed the petitioner throwing away the Hon'ble Prime Minister photo. He argues that these are however factual matters and in the absence of any procedural irregularity there is no scope to travel beyond in writ jurisdiction. He however reasserts that the enquiry report clearly manifest the petitioner's direct involvement in the offence.

The learned Advocate for the petitioner contended that the offence even if committed does not fall within the ambits of section 37(cha) of the Sadharan Bima Corporation Employment Service Rules, 1992. She persuades that the offence did not amount to any নাশকতামূলক subversive act. The learned Advocate for the respondents controverts such argument of the petitioner. He submits that throwing away the Hon'ble Prime Minister photo may evidently incite and lead to violence tantamounting to নাশকতামূলক subversive conduct. He submits that therefore throwing away the Hon'ble Prime Minister's photo falls within the ambits of section 37(Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992 since it evidently incites violence and terrorism. He submits that in the তদন্তের ধরন of the investigation report কলাম ক of the report reflects that the petitioner

also resorted to নাশকতামূলক activities. Column Kha of the তদন্তের ধরন states “৮ম তলার ফ্লোরে রক্ষিত অগ্নি নির্বাপক যন্ত্র ও ইউনিয়ন অফিসের আসবাব পত্র ভাংচুর।” . He submits that therefore there is no way that the petitioner can argue that the offence does not fall within the meaning of section 37(Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992.

Regarding the pending appeal he submits that although the appeal was not disposed of initially, but however the respondents already disposed of the appeal on the merits of the case during pending Rule. He submits that hence the appeal has been disposed of on the factual merits and therefore is no more scope to reopen any factual issues. In support of his submissions he cites two decisions one in the case of Abu Jafor Vs. Bangladesh reported in 16 BLC(2011)601 and another in the case of Bangladesh Vs. Jalil reported in 48 DLR(AD)(1996)10. Relying on his submissions and the decisions in support he concludes upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

Learned D.A.G Mr. Noor Us Sadik for the respondent No. 1 substantively supports the submission of the learned Advocate for the respondent No. 2 and prayed that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned counsels for both sides, perused the application and materials on record before us. At the onset of our findings, it may be significant to note that the petitioner did not allege any basic procedural illegality in due process whatsoever. It is also revealed to us from the materials before us that there has been no

procedural illegality and the proper departmental procedure was duly followed.

The basic submission of the petitioner is primarily on the factual issues. Although it is a general principle that factual issues cannot be investigated into in writ jurisdiction but nevertheless in this particular case we have also examined part of the factual issues by way of the enquiry report. For purposes of proper assessment of the matter, it may be pertinent to assess some of the relevant portions of the enquiry report of the Annexure-D which is reproduced below:

“ কর্মচারী ইউনিয়ন অফিসে রক্ষিত মাননীয় প্রধান মন্ত্রীর ছবি জনাব মোঃ সাজেদুল হক শাহীন, উচ্চমান সহকারী, ফেলে দেন যা সাক্ষ্যদান কারীদের লিখিত ও মৌখিক বক্তব্য ও সরবরাহকৃত ভিডিওতে (পৃষ্ঠা ১৯, ২০) প্রতিয়মান হয়েছে। এছাড়াও সরবরাহকৃত অন্য সহকর্মীর ফেসবুকে দেওয়া স্ট্যাটাসের উপর কमेंটস এ তিনি যে কमेंটস করেন তাতেও তার সংশ্লিষ্টতা প্রতিয়মান হয়েছে। ***** প্রসঙ্গত: উল্লেখ্য যে, দুপক্ষের মধ্যে বাক-বিতর্ক, তর্কবিতর্ক ও উচ্চ সোরগোলের এক পর্যায়ে উচ্চমান সহকারী ও কর্মচারী ইউনিয়ন কার্যকরি পরিষদের একজন প্রতিনিধি জনাব, মোঃ সাজেদুল হক শাহীন দেয়ালে রক্ষিত মাননীয় প্রধান মন্ত্রীর ছবিটি ভিড়ের মধ্যে ফেলে দেয় যা ভিডিও ফুটেজ থেকে স্পষ্টত; দেখা যায়। অবস্থাদৃষ্টে তা উদ্দেশ্য প্রনোদিত বলেই প্রতিয়মান হয়।”

We have also examined the মন্তব্য করলাম including the recommendation. Upon perusal of the enquiry report it appears to us pertaining from the inference to a video-footage that there is prima-facie involvement of the petitioner in the alleged offence.

The petitioner at one stage of her submissions argued that the offence if at all committed shall not fall under the ambits and within the definition of ‘গুরুদণ্ড’. We may pause here to observe that such

contention of the petitioner is self contradictory and inconsistent. The learned Advocate for the petitioner at one tune claims that the petitioner had no involvement in the offence at all. While in another tune she argues that even if the offence at all was committed it shall fall under the ambits of লঘুদণ্ড and not ‘গুরুদণ্ড’. She however could not provide any satisfactory explanation as to how and under which section of the law such act shall fall within the provisions of লঘুদণ্ড.

The findings etc in the enquiry report reflect the direct involvement of the petitioner. It is also the petitioner’s contention that the petitioner did not commit any নাশকতামূলক activities. In agreement with the learned Advocate for the respondent No. 2 our considered view is that throwing away the Hon’ble Prime Minister’s photo may evidently incite নাশকতামূলক activities. Moreover it also appears from column ka of the তদন্তের ধরণ that some direct নাশকতামূলক activities was also committed. Moreover, as stated elsewhere throwing away the Hon’ble Prime Minister’s photo certainly fall within the purview of subversive activities.

We are of the considered view that in the absence of any procedural illegality the respondents did not commit any illegality in dismissing the petitioner under rule 37(Cha) of the Sadharan Bima Corporation Employment Service Rules, 1992.

We have also examined annexure-3 of the affidavit in opposition. Even though the appeal filed by the petitioner was not disposed of earlier, but however the appeal was disposed of on the merits during pending Rule. Once an appeal although subsequently is

disposed of on the factual merits, such factual issues cannot be reopened particularly in writ jurisdiction.

Therefore under the facts and circumstances we do not find any merits in the Rule.

In the result, the Rule is discharged without any order costs.

Communicate this judgment at once.

Kazi Zinat Hoque, J:

I agree.