

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

Writ Petition No. 4089 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. Sadaqat Khan Fakku and others

..... **Petitioners.**

-Versus-

Government of Bangladesh, represented by the Secretary, Ministry of Power, Energy and Mineral Resources, Bangladesh Secretariat, Dhaka and others,

... **Respondents.**

Mr. Md. Hafizur Rahman Khan, Advocate with Ms. Chowdhury Mowsumee Fatema, Advocate & Mr. Md. Jahirul Islam(Sumon), Advocate,

.....**For the petitioners.**

Mr. Md. Mokleshur Rahman, Advocate

.....**For respondent No.8-10.**

Mr. Swapnil Bhattacharya, Advocate

...**For respondent No.11.**

Mr. Md. Faisal Islam, Advocate,

...**For respondent No.13 & 17.**

Mr. Bepul Bagmar, D.A.G.

...**For the respondent.**

Judgment on: 31.08.2022

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice Md. Iqbal Kabir

Md. Khasruzzaman, J:

In the application under article 102 of the Constitution, on 09.05.2018 the *Rule Nisi* under adjudication was issued in the following terms:

“In light, inter alia, of the Appellate Division Order of Status-Quo dated 10.07.2016 in C.M.P. No. 915 of 2016 (CPLA No. 167 of 2017) and of the pendency still of CPLA No. 167 of 2017, let a Rule Nisi be issued calling upon the respondents to show cause as to why the resolution dated 28.03.2017 taken in the meeting held at the office room of the respondent No.4 about payment of Electricity bills of 2016-2017 financial year along with current bills for the Non-Bangali(Behari) camps saying that since the Rule Nisi was issued in Writ Petition No. 3888 of 2005 and subsequently the Rule was discharged by a Division Bench of this Court on 28.03.2016 and 29.03.2016 and the stay order was vacated and they are the citizens of Bangladesh and their names have been enlisted in the electroral rolls, the Ministry of Disaster Management and Relief would not pay the Electriity Bills for the camps of the Non-Banglalees since 28.03.2016(Annexure-D) should not be declared to have been done 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.”

Facts necessary for disposal of the Rule Nisi, in short, are as follows:

The petitioners are the Non-Bengali/Behari Urdu Speaking people and they are residing in the earmarked camps along with other having status organized by the International Committee of the Red Cross (ICRC) under the supervision and control of the Government of the People's Republic of Bangladesh. It is stated that since they have been continuously residing in the territory of Bangladesh, they have full allegiance to the Government of Bangladesh and as such they are the citizens of Bangladesh according to the Citizenship Act and their names were enrolled in the electoral rolls as voters as per the judgment and order passed in Writ Petition No. 10129 of 2007. It is stated that earlier in 2002 the Chief Property Officer of Dhaka City Corporation by its Memo dated 29.01.2002 requested the Commissioner, Dhaka Metropolitan Police, Dhaka to deploy requisite numbers of police force in order to drive the eviction of the illegal occupiers in Ward Nos. 3 and 5, Avenue-3, Section-11, Pallabi, Dhaka, Challenging the same, the petitioner Nos. 1 and 2 filed Writ Petition No. 702 of 2002 and obtained Rule Nisi along with an interim order of injunction. Thereafter, in 2003, the National Housing

Authority and the Dhaka City Corporation without issuing any prior notice demolished the ADC Non-Local Relief Camps and as such, the petitioner Nos. 1 and 2 filed Writ Petition No. 2375 of 2003 challenging such illegal activities and obtained *Rule Nisi* along with an interim order of injunction. It is stated that the aforesaid two Rules Nisi alongwith 07(seven) other *Rules Nisi* over the similar issues were heard by this Court and finally discharged by a common judgment and order dated 28.03.2016 and 29.03.2016. Challenging the aforesaid judgment and order dated 28.03.2016 and 29.03.2016 so far it relates to Writ Petition No. 702 of 2002 and 2375 of 2003, the present petitioner Nos. 1 and 2 filed Civil Petition for Leave to Appeal Nos. 3696 of 2016 and 3697 of 2016 before the Appellate Division which were ultimately disposed of by a common judgment and order dated 11.12.2016 with observation that the possession of the Urdu speaking people within the area earmarked by the Government shall be protected but the authority will be at liberty to evict them if they have encroached upon any land beyond the designated areas. It is stated that the International Aid Organizations namely, International Committee of the Red Cross (ICRC) and the Red Crescent Society had provided the petitioners and their

community people with the relief goods till 1976 and afterwards, the Government of Bangladesh took the responsibilities to provide them with relief goods and to supply water, electricity and gas connection free of costs. Referring to Clause (Ga) of article 5 of the resolution dated 15.11.1991 (Annexure-C-2), it is stated that the responsibility lies with the Ministry of Disaster Management and Relief to pay of the bills of water, electricity and gas consumed by the petitioners and their community people living in the 70 camps in 13 Districts of Bangladesh. But surprisingly, decision has been taken by the respondents in a meeting held on 28.03.2017 that the Ministry of Disaster Management and Relief would not pay the electricity bills for the camps of the Non-Bengalis for the financial year 2016-2017 along with current bills on the ground of Rule Nisi issued in Writ Petition No. 3888 of 2005 being discharged and the order of stay being vacated and the said decision was communicated to the concerned authorities vide Memo No. 51.005.020.00.00.001.2012.134(1(13) dated 16.04.2017 (Annexure-D).

Referring to the aforesaid resolution, on 08.01.2008 the Ministry of Disaster Management and Relief wrote a letter to the respondent No. 5 stating that the facility of electricity

should not be given to the petitioners and their community people free of cost (Annexure-E) and the same was communicated by the respondent No.5 to the concerned electricity departments by its letter dated 21.01.2018 (Annexure-E-1). Accordingly, the DESCO and the DPDC have demanded the arrear of the electricity bills asking the concerned Chairman of the Camps to pay of the same within a period stipulated in the letters (Annexure-F Series).

Under such circumstances, the petitioners have challenged the resolution dated 28.03.2017 taken in the meeting held at the office room of the respondent No.4 about non-payment of electricity bills of 2016-2017 financial year alongwith current bills for the Non-Bengali (Behari) camps in the present writ petition and obtained *Rule Nisi* on 09.05.2018 along with an interim order of stay and status-quo.

Challenging the interim order dated 09.05.2018 granted at the time of issuance of the instant *Rule Nisi*, the writ respondent-Government filed Civil Petition for Leave to Appeal No. 2152 of 2018 before the Appellate Division. However, after hearing the parties and on perusal of the materials on record, the Appellate Division by order dated 23.07.2018 has disposed of the civil petition observing that

ends of justice would be best served, if the Rule itself is disposed of on merit by the High Court Division.

Accordingly, the Rule has been taken up for hearing at the instance of the learned Advocate for the petitioners.

Respondent Nos. 2, 4 and 5 filed an affidavit-in-opposition denying all material allegations made in the writ petition and contending *inter-alia* that admittedly the petitioners are the Non-Bengalees (Bihari) and currently they are included in the voter list and as such, they are the citizens of Bangladesh. Since the *Rule Nisi* in Writ Petition No. 3888 of 2005 was discharged and the order of stay granted earlier was vacated, it was rightly decided in the resolution dated 28.03.2017 that the respondent Nos. 2, 4 and 5 would not pay the electricity bills from 28.03.2016 and onwards. It is further stated that the resolution dated 28.03.2017 and the letters dated 08.01.2018 and 21.01.2018 are inter-ministerial correspondences regarding the policy decision of the Government challenging the same the instant writ petition is not maintainable in the eye of law. Moreover, it is stated that since the concerned respondents are agreed to pay the outstanding dues of electricity bills till 28.03.2016, which is the date on which the *Rule Nisi* in Writ Petition No. 3888 of 2005 was

discharged. Thus, being aggrieved the petitioners can not institute the present case by challenging the impugned decisions and as such, the *Rule Nisi* is liable to be discharged.

Respondent Nos. 8 to 10 filed an affidavit-in-opposition incorporating more or less similar statements as those of the respondent Nos. 2, 4 and 5 as stated above. In addition it is stated that under the Network Operation and Customer Service (NOCS), DPDC of Shyamoli, Shatmosjid Road, Mohammadpur, Dhaka and Siddirgonj, Narayangonj Zone have been supplying electricity to the petitioners' camps including other Bihari camps since long and the respondent No.2 Ministry was paying electric bills, subsequently, the petitioners and other adult Non-Bengalees (Bihari) were included in the electoral rolls as voters and became the citizens of Bangladesh and since the *Rule Nisi* in Writ Petition No. 3888 of 2005 was discharged and stay order was vacated and since the respondent Government by the impugned inter-ministerial resolution dated 28.03.2017 took a decision that the respondent No.2 Ministry would not pay any further electric bills consumed by the petitioners and like others after 28.03.2016, these respondents have nothing to do but claim their dues and current electric bills

as per consumption and as such, the *Rule Nisi* is liable to be discharged.

Respondent No.11 filed an affidavit-in-opposition stating *inter-alia* that as per the impugned inter-ministerial resolution dated 28.03.2017 which was communicated to it, since it was decided that the respondent No.2 Ministry would not pay any further electric bills consumed by the petitioners and like others after 28.03.2016, this respondent has nothing to do but claim its dues and current electric bills as per consumption. It is also stated that the DESCO is entitled to recover the outstanding dues from the petitioners and others as per consumption by them who are the residence of the Non-Bengalees (Bihari) camps. Moreover, the instant writ petition has been filed as a device to avoid the legitimate payment of DESCO and the writ petition being involved disputed question of facts and as such, the *Rule Nisi* is liable to be discharged.

Respondent Nos. 13 and 17 have filed an affidavit-in-opposition denying all material allegations made in the writ petition and contending *inter-alia* that since the point involved in this writ petition has already been settled against the writ petitioner in Writ Petition No. 3888 of 2005 and CPLA No. 167 of 2017, there is nothing in this writ petition

to adjudicate further and hence, the *Rule Nisi* is liable to be discharged.

Mr. Md. Hafizur Rahman Khan along with Ms. Chowdhury Mowsumee Fatema and Md. Jahirul Islam (Sumon), the learned Advocates appearing on behalf of the petitioners, submits that the writ petitioners are the helpless and distressed persons living in the camps earmarked by the government along with other community people and they were being provided with the water, gas and electric line free of costs by the Government and as such, stoppage of such facilities by the impugned resolution is violative of articles 27, 29 and 31 of the Constitution and as such, the same is illegal and without lawful authority. Referring to the observation made in the judgment and order dated 28.03.2016 and 29.03.2016 passed in Writ Petition Nos. 702 of 2002 along with 08(eight) other writ petitions, the learned Advocate further submits that the decision of non payment of electric bills by the respondents in the impugned resolution dated 28.03.2016 is against the observation made in the judgment. By making the aforesaid submissions, the learned Advocate prays for making the *Rule Nisi* absolute.

Ms. Israt Jahan, the learned Advocate appearing on behalf of the respondent Nos. 2, 4 and 5 submits that since

the point involved in this Rule Nisi has already been decided in Writ Petition No. 3888 of 2005 and Civil Petition for Leave to Appeal No. 167 of 2017 (arising out of Writ Petition No. 3888 of 2005) against the writ petitioners, the present *Rule Nisi* is liable to be discharged.

Mr. Md. Mokleshur Rahman, the learned Advocate has appeared on behalf of the respondent Nos. 8 to 10 and Mr. Swapnil Bhattacharya, the learned Advocate has appeared on behalf of the respondent No. 11 and Mr. Md. Faisal Islam, the learned Advocate has appeared on behalf of the respondent Nos. 13 and 17 and they all by adopting the similar submissions of the respondent Nos. 2, 4 and 5 have prayed for discharging the *Rule Nisi*.

In addition to the above, the learned Advocates for the respondents have pointed out that the impugned resolution is out and out an internal policy decision of the respondent-Government of which there is a settled principle of law that no writ petition is maintainable challenging the internal correspondence as the same has not yet been communicated to the writ petitioner, and no cause of action has yet been arisen out of the same. In support of their submissions, the respondents have referred to the case of ***Md. Abul Hossain Sana Vs. Bangladesh, Writ Petition***

**No. 1946 of 2015 (judgment delivered on 07.10.2020);
Rokeya Begum and another Vs. Bangladesh and others,
69 DLR(AD)185.**

Having heard the learned Advocates appearing on behalf of their respective parties and on perusal of the writ petition, supplementary affidavits, affidavits-in-opposition along with papers annexed thereto, it appears that this writ petition has been filed by the petitioners being the Non-Bengalees (Bihari) and residents of the camps situated at Pallabi, Mohammadpur of Dhaka District and also at the camp of Nilphamari District.

It appears from the impugned resolution that in taking such resolution the respondents have considered the result of Writ Petition No.3888 of 2005 stating that since the *Rule Nisi* in Writ Petition No.3888 of 2005 was discharged and stay order was vacated and cancelled, the electric facility would not be given free of cost. It further appears that against the said judgment and order dated 28.03.2016 and 29.03.2016 passed in Writ Petition No. 3888 of 2005 the present petitioners filed Civil Petition for Leave to Appeal No. 167 of 2017 before the Appellate Division.

However, from the Rule issuing order it appears that the Rule Nisi was issued considering the pendency of said

CPLA No. 167 of 2017 before the Appellate Division on similar point which was filed against the judgment and order dated 28.03.2016 and 29.03.2016 passed in Writ Petition No. 3888 of 2005 by the High Court Division discharging the *Rule Nisi*.

So, it is clear that the fate of the instant Rule Nisi is subject to the result of the said CPLA No.167 of 2017. It appears from the affidavit-in-opposition filed by respondent Nos. 13 and 17 that the said Civil Petition for Leave to Appeal No. 167 of 2017 was dismissed by the Appellate Division on 09.11.2020. Under such circumstances, we have no other option but to hold that there is nothing to adjudicate further in this *Rule Nisi* and hence the same is liable to be discharged.

Moreover, from the impugned resolution in this writ petition vide Annexure-D, it appears that the same is a policy decision of the Government, taken on the basis of the *Rule Nisi* in Writ Petition No. 3888 of 2005 which has been issued to different government offices with which no footstep of the petitioners are involved.

In such circumstances, the learned Advocates for the respondents have rightly submitted that the impugned resolution is out and out an internal Government

correspondence challenging which no writ petition is maintainable under article 102 of the Constitution.

In this respect the principle as settled by this Division as well as by the Appellate Division is required to be looked into for fortifying the contentions of the learned Advocates for the respondents.

This Court in **Writ Petition No. 1946 of 2015, judgment delivered on 07.10.2020** held that “*challenging the internal correspondence and enquiry report for taking necessary steps on enquiry report which was not communicated to the petitioner, the judicial review is not amenable.*”

In the case of **Rokeya Begum and another Vs. Bangladesh and others, 69 DLR (AD)185** it has been held that “*Internal correspondence unless communicated to the person concerned cannot be basis of cause of action for moving the High Court Division under its power of judicial review and we hold that since the copy of the impugned memo was not communicated to the writ petitioners, no cause of action arose to seek any remedy challenging the said Memo.*”

In view of the aforesaid decision, we are constrained to hold that since the impugned resolution was not communicated to the writ petitioners and since the same is out and out an internal correspondence of Government different offices, the writ petitioners do not have any cause of action by the said impugned order and the writ petitioners do not have any scope to be aggrieved to challenge the same in the writ petition under the power of judicial review under article 102 of the Constitution.

In view of the reasons and discussions made hereinabove, we do not find any substance in the *Rule Nisi* as well as in the submissions of the learned Advocates for the writ petitioners and as such, the *Rule Nisi* fails which is liable to be discharged.

Be that as it may, admittedly the petitioners were the stranded Pakistanis living at designated camps in 13 districts over the Country. The matter involved regarding payment of arrear of the electricity bills were consumed by those camps. It appears that the government has already paid electricity bills upto 28.03.2016. By the impugned resolution the respondents have taken decision that the respondent No.2 would not pay electric bills any further from 28.03.2016 and in arriving such decision, the

respondents have taken into consideration the judgment and order of Writ Petition No.3888 of 2005. We have taken into consideration the judgment and order of Writ Petition No. 3888 of 2005. It is pertinent to note that the State had to bear the burden of paying for unrestrained electricity at the huge cost of taxpayers' money. It appears that some of the residents of the camps have already taken prepaid electricity connection in their respective names. At this juncture, the respondents may allow electricity connection to all of the residents of the camps on payment.

In the present case, the petitioners and the residents of the camps may have opportunity to file an application for getting electricity connection at their respective accommodations. If the residents of the camps apply to get such connection, the authority may have liberty to take steps in accordance with law.

Accordingly, the *Rule Nisi* is discharged with the above observations.

There will be no order as to costs.

Communicate the order.

Md. Iqbal Kabir, J.

I agree.