

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. 10818 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:

Plato Bala

..... Petitioner.

Vs.

Government of Bangladesh and
others.

..... Respondents.

Mr. Gazi Farhad Reza, Advocate

.....for the petitioner

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

with Mr. Prahlad Debnath A.A.G

with Mr. Md. Hafizur Rahman A.A.G

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

... for the respondents No. 1

Mr. Subrata Kumar Kundu, Advocate

.... for the respondent No.2.

Heard on: 08.08.2022 and judgment on:

17.08.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why their decision to refuse the petitioner's application for equivalent certificate of his BBA decree earned from Victoria University of Management, Switzerland in violation of Rule 15 of the CBHE Rules 2014, should not be declared illegal, unconstitutional

and without any lawful authority and further as to why a direction should not be given to the respondents to take appropriate steps to issue equivalent certificate to the petitioner as soon as possible and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Plato Bala son of Ashutosh Bala of 6th Floor, 57/A Abdul Aziz Lane, Police Station- Lalbagh, District-Dhaka is a citizen of Bangladesh. The respondent No. 1 is the Secretary, Ministry of Education, Bangladesh Secretariat, Ramna, Dhaka, respondent No. 2 is the Chairman, University Grants Commission of Bangladesh (UGC), UGC Bhaban, Plot# E-18/A, Agargaon Administrative Area, Sher-e-Bangla Nagar, Dhaka-1207, respondent No. 3 is the Secretary, University Grants Commission of Bangladesh (UGC), UGC Bhaban, Plot# E-18/A, Agargaon Administrative Area, Sher-e-Bangla Nagar, Dhaka-1207.

The petitioner's case in short is that he has completed his S.S.C from in 2008 and H.S.C in 2010. After completing his higher secondary education, he admitted himself in the World University, Bangladesh and successfully completed two years BBA programme from the said University. Thereafter the petitioner got admitted himself into final year to up BBA programme in Victoria University, Switzerland (hereinafter, "VU") through a local study support centre named Kingston Institute of Management and Technology, Jafor Villa, Road No. 1, House No. 32-16/A, Panchlaish, Chittagong, Bangladesh and graduated from the same university on 28 November 2015. That UV was founded by principal academics from the

University of Neuchatel. The school was constituted in 2002 as a special project of the Neuchatel Government. Academics from the World Trade Institute in Bern also participated in the initiative. In 2002, the Swiss Canton of Neuchatel officially approved “Victoria University” and VU is entitled to offer programs leading to a BBA, an MBA, an EMBA and a DBA degree. VU is certified and accredited by the nationally accrediting agency EduQua, the official, Swiss accreditation body recognized and endorsed by the Swiss Confederation Government and the Swiss Conference of Cantonal Ministers of Education (EDK) as an official recognized quality assurance scheme. VU is a member of the Association to Advance Collegiate Schools of Business (AACSB) and the International Assembly for Collegiate Business Education (IACBE). VU, the Netherlands EPBS is accredited by NVAO. Furthermore, VU is approved and accepted by the PRME Steering Committee to participate in the Principles for Responsible Management Education (PRME) initiative. VU is a registered institution providing Bachelor of Business Administration and Master of Business Administration is duly registered under Ministry of Education. It is also a member of the Association of Advance Collegiate Schools of Business since January 2009. This institute is also registered with Development Economique Canton De Neuchatel (DEN), Switzerland and it has campuses situated in different countries around the world providing external education. That the one-year Top up BBA degree offered by VU offers the participant the opportunity to ‘top up’ their diploma, foundation degree or equivalent overseas

qualification and gain full undergraduate degree status. For his BBA Top Up degree, the petitioner has successfully completed his examinations by submitting course works to VU and sitting at the British Council exam center, Chittagong. It is relevant to state here that VU signed a MoU with British Council, Bangladesh for the provision of examinations administration. That after successfully completing his graduation from VU the petitioner received certificates from the said university and later applied to University Grants Commission, Bangladesh (hereinafter, UGC) for equivalent certificate of his degree earned from VU. That UGC is the relevant authority to issue equivalent certificate earned by Bangladeshi nationals from authentic foreign universities and it is legally obliged to provide an equivalent certificate under Rule 15 of the CBHE Rules 2014. That after receiving the request from the petitioner approximately 2.5 years later UGC refused to provide equivalent certificate vide a refusal notification email attaching a screen shot of the decision of the UGC's 90th steering Committee's meeting minutes refusing to give petitioner equivalence certificate dated 15.01.2018. That upon receiving the refusal notification dated 15.01.2018 the petitioner appealed to the Ministry of Education dated 24.06.2018 which is the final appeal authority under CBHE Rules 2014 but till date petitioner has received no response from concerned Ministry. That since the petitioner has not heard anything from the last appellate forum as stated above, thus, the petitioner has no other efficacious and alternative remedy except by way a writ petition under Article 102 of the Constitution of the People's Republic of Bangladesh. Hence the writ petition.

Learned Advocate Mr. Gazi Farhad Reza appeared on behalf of the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Prahlad Debnath, A.A.G along with Mr. Md. Hafizur Rahman, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent No. 1 and learned Advocate Mr. Subrata Kumar Kundu appeared for the respondent Nos. 2 and 3.

Learned Advocate for the petitioner submits that the respondents by refusing to acknowledge his foreign degree and refusing his application for equivalent certificate for BBA degree for foreign university is in violation of Rule 15 of the CBHE Rules 2014. He contends such unlawful refusal of the respondents is unlawful and arbitrary and needs interference in writ jurisdiction. He submits that although he earned his degree from Victoria University of Management, Switzerland and appeared in his examination through British Council but the respondents however refused to acknowledge his degree and unlawfully refused to grant him equivalent certificate. He takes us to Annexure-G series which is the impugned letter by way of email sent to the petitioner. There was a query from this bench to the learned counsel for the petitioner regarding the reason shown by the respondents refusing to grant equivalent certificate to the petitioner by way of column 44 by annexure G series. He controverts and agitates that the respondent's statement that the local institution is not recognized by UGC and the government is not of any concern to the petitioner. He persuaded that although he received coaching from this center and got admitted in this center for purpose of coaching etc. but however he contended that he appeared in the examination

directly with the University through assistance of the British council. He submits that therefore whether the study center is recognized or not of is not relevance to the instant petitioner since the petitioner earned his degree by appearing from the British council from the concerned Victoria University, in Switzerland. He submits that he appeared in the examination through British Council in Dhaka where his examination was held and his examination paper went directly to the concerned Victoria University, Switzerland. He submits that by being successful in the examination he received his certificate from Victoria University, Switzerland. To substantiate his submission that he appeared in the British Council he takes us to Annexure- C. Drawing attention to Annexure C he submits that Annexure- C is the receipt of fee from the British Council. He argues that therefore since he received his certificate and degree directly from the University therefore the respondents are not in a position to refuse him equivalent BBA degree. He next submits that the respondents particularly respondent No. 2 acted in contravention of the Bidhimala (বিধিমালা) vide S.R.O No. এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন). He points out that the respondents particularly acted in contravention of the provision of Rule 15(3) of the Bidhimala(বিধিমালা). He submits that while making application the petitioner provided all the requisite certificates under the Rule. He draws our attention to Rule 15(3) of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) and contends that Rule 15(3) of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) which contemplate that without giving any

opportunity of hearing to a person an application shall not be refused. He submits that it is clear that due process was not afforded to the instant petitioner before refusing his application. He submits that the respondents also acted in total violation of the statutory and fundamental rights of the petitioner guaranteed under the mandate of the Constitution. He submits that however pursuant to refusal by the respondent No. 2 the petitioner made an application to the Ministry of Education following the provision of Rule 15(4) of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) which is annexed as annexure-F. He contends that however the respondent No. 1 Ministry of Education did not dispose of the application of the petitioner and therefore the respondent No. 1 further acted in violation of the fundamental rights of the petitioner. He concludes his submission upon assertion that the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned Advocate for the respondent No. 2 and 3 vehemently opposes the Rule. At the onset of his submissions he takes us to the Private University Ain-1992 (বেসরকারী বিশ্ববিদ্যালয় আইন, ১৯৯২). Drawing attention to Section 3 of the Private University Ain-1992 (বেসরকারী বিশ্ববিদ্যালয় আইন, ১৯৯২) he particularly draws us to section 3(3) of the private University Ain-1992 (বেসরকারী বিশ্ববিদ্যালয় আইন, ১৯৯২) . Referring to Section 3(3) of the Private University Ain-1992 (বেসরকারী বিশ্ববিদ্যালয় আইন, ১৯৯২) he persuades that section 3(3) of the Ain clearly contemplate that without the approval (অনুমোদন) of the concerned Ministry/authority representing the Government no

functioning of any foreign University or Educational institution or study center shall be allowed. In this context he continues that the university namely Victoria University from Switzerland where the petitioner has received his degree is not recognized by the UGC. In this context he draws our attention to the Annexure-G series of the writ petition. He agitates that by way of Annexure-G series the respondents have clearly stated their reason for refusal and further they have clearly stated that the said Victoria University, Switzerland is not recognized by the UGC (University Grants Commission) and the Government. He submits that therefore in the absence of such foreign University itself not being recognized nor the study center being recognized by the Respondents and not having recommendation from the government therefore the instant petitioner is not entitled and does not have lawful right to receive equivalent certificate of degree from the UGC.

Upon a query from this bench as to whether before refusing the petitioner's application the respondents complied with the provision of Rule 15(3) of the Private University Ain-1992 (বেসরকারী বিশ্ববিদ্যালয় আইন, ১৯৯২) which contemplates personal hearing to the petitioner, however the learned Advocate for the respondent was non committal.

The learned Advocate for the respondent next draws our attention to the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) and particularly draws our attention to Rule 4 and 14 of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) . He submits that Rule 4 of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন)

contemplate that without certificate or permission from the Government no campus or study center affiliated with any foreign University is allowed. He draws attention to Rule 14 of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) and submits that since the petitioner did not comply with Rule 14 of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) therefore the respondents are not bound to follow the provision of Rule 15 of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) . He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

Learned D.A.G appeared for the respondent No. 1 and supports the substantive contention of the learned Advocate for the respondent No. 2 and 3.

We have heard the learned Advocate for the respective parties and perused the writ petition. The major part of the submission made by the learned Advocate for the petitioner are factual submissions but however the petitioner draws our attention to Rule 15(3) of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন). He submits that before refusing his application by way of Annexure G the respondents did not comply with Rule 15(3) of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) and did not afford his chance personal hearing.

The learned Advocate for the respondents mainly contended that since the local study center and also the said Victoria University,

Switzerland neither the university nor the study centre is recognized by the Respondents UGC whatsoever consequently a degree received from these universities (are also recognized by the respondents). He submits that such being the position, the petitioner has no legal entitlement to receive equivalent certificate from UGC.

However our considered view is that since we are sitting in writ jurisdiction here, it is our duty to monitor as to whether before refusing his application the petitioner was afforded a chance of personal hearing. The learned Advocate for the respondents contended that chance of personal hearing to the petitioner under Rule 15(3) of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) is only dependant and subject to compliance of Rule 14. On this issue we are not in agreement with the learned Advocate for the respondent. It is a principle of natural justice that before refusing a person anything which he claims to be entitled to, it is a fundamental right under the principles of natural justice to be afforded a change to be heard.

Moreover upon perusal of Rule 14(3) of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) it does not appear anywhere that a personal hearing is subject to the compliance of any condition set out in Rule 14 of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন). Rule 15(3) affords a change of personal hearing. That in our view is a statutory and fundamental right of the petitioner to be heard before being denied his claim. But in the petitioner's case it appears that

however the respondents did not give the petitioner any change of personal hearing.

Under the fact and circumstances and from the foregoing discussion made above and after hearing the learned Advocates for both sides we are inclined to dispose of the Rule with some directions.

In the result, the Rule is disposed of. The respondent No. 2 is hereby directed to afford a chance of personal hearing to the petitioner following the provisions of Rule 15(3) of the এস.আর. ও নং ৯৪-আইন/২০১৪- বেসরকারি বিশ্ববিদ্যালয় আইন, ২০১০ (২০১০ সনের ৩৫ নং আইন) and shall dispose of the matter in accordance with the relevant Laws and Rules.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J:

Arif(B.O)