

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

Writ Petition No. 27 of 2020

In the matter of:

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

AND

In the matter of:

Manzu Monowara, wife of Md. Shabbir Ahamed, Senior Assistant Secretary (Research Wing), Ministry of Foreign Affairs, Government of Bangladesh, resident of Flat-A-3, House No. 27, Road No. 8, Sector-10, Uttara, Dhaka-1230.
..... Petitioner.

-Versus-

Government of the People's Republic of Bangladesh, represented by the Foreign Secretary, Ministry of Foreign Affairs, Segunbagicha, Dhaka and others
..... Respondents.

Mr. Jyotirmoy Barua, Advocate

.....For the petitioner.

Mr. A.M. Aminuddin, Attorney General with
Mr. Muhammad Rafiul Islam, Advocate

.....For the respondent Nos.1 and 8.

Mr. Bepul Bagmar, D.A.G

.....For the respondent No.

Judgment on: 30.08.2023

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice Md. Khairul Alam

Md. Khasruzzaman, J:

In the application under article 102 of the Constitution, on 05.01.2020 the *Rule Nisi* under adjudication was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned inaction of the respondents in not taking punitive action against the respondent Nos. 3, 4 and 9 based on the inquiry report of the Complaint Committee should not be declared illegal, 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 that on 30.11.2008 the petitioner joined in the post of Assistant Secretary, Ministry of Foreign Affairs. Subsequently, on 15.11.2012 she was posted as Second Secretary in the Bangladesh Embassy, Tokyo, Japan. The respondent No.9 namely, Nur-E-Alam was also posted as Councilor (Political) in the Bangladesh Emabssy, Tokyo, Japan in June 2013 and since then he started harassing the petitioner randomly amongst other, seeking sexual favour indirectly using indicative languages which are covered by the definition given by the High Court Division in Bangladesh National Women Lawyers Association Vs. Government of Bangladesh and others, 29 BLD (HCD) 415. In 2015 when the sexual harassment and mental torture were being done by respondent No.9, then the petitioner was pregnant. On 12.06.2015 respondent No.9, Nur-E Alam, threatened her to kick out if she did not respond to his order, and it was informed the then Ambassador of Bangladesh Embassy, Tokyo, Japan from time to time by the petitioner, but no action was taken to resolve the matter, nor any investigation was carried out on the allegation made against the respondent No.9. However, the petitioner was advised by her doctor to take bed rest as at that time she was pregnant. But she was not allowed to go on leave as a part

of harassment, rather she was asked to submit ultra sonogram report for nine times to prove her pregnancy. Accordingly, the petitioner submitted ultra-sonogram reports of different dates. Even then she was not allowed to go on leave. Due to severe mental pressure by the respondent No.9 and his associates, the fetus in her womb stopped heartbeat, and as such, on 19.07.2015 the petitioner was diagnosed and found miscarriage. Subsequently, the petitioner got post-facto approval of earned leave after her miscarriage at the 14th week of her pregnancy (Annexures- B to B-11).

In the meantime, the petitioner was transferred to Deputy High Commission of Bangladesh in Mumbai, India but she was receiving threats from respondent No.4 that they will not allow her to join in the Deputy High Commission of Bangladesh, Mumbai, India. Despite such threats, the petitioner joined in the Deputy High Commission of Bangladesh, Mumbai in October 2015 and subsequently, she went through further harassment by respondent No.4 and other colleagues. She has to go under severe mental pressure after losing her child and these additional coercive actions of the respondents made her more vulnerable both physically and psychologically. She was even admitted in the ICU of Bombay Hospital in Mumbai for severe sickness. The petitioner informed these type of incidents to her higher officials i.e. the then Ambassador to the High Commission of Bangladesh in Delhi, India and also to respondent No.6 in writing, but the respondents instead of taking action against the respondent No.4 and other responsible

officers made false accusations against the petitioner (Annexures C, C-1 and C-2). Subsequently, in November 2015 she was transferred to the Ministry of Foreign Affairs Bangladesh. It is stated that on several occasions the petitioner made written complaints to the respondent No.1 against the respondent No.9 for sexual harassment but no action has ever been taken against him, rather a group of senior officials of the Ministry at home and abroad started harassment in different way to the petitioner.

It is stated that the petitioner became conceived again in the 2nd week of November 2015. On 22.05.2016 after 06 months she informed the respondent No.1 about her pregnancy in writing. Afterwards, on 21.06.2016 she received an e-mail regarding departmental proceeding against her (Annexure-D). By another e-mail on the same day she was informed about the withdrawal of the departmental proceeding by the Ministry. Subsequently, on 11.07.2016 she was sent another e-mail regarding initiation of a fresh departmental proceeding which was also withdrawn on 17.07.2016 (Annexures D-1 and D-2). The petitioner by this time was on maternity leave and had pre-term delivery just one week later on 25.07.2016. It is stated that the petitioner was on leave until 23.4.2017. After joining the Research Wing of the Ministry she had to face different forms of harassment by the respondents. In the meantime the respondent No. 9, offered the petitioner to compromise with him by different persons. Thereafter, a fresh departmental proceedings was formed against the petitioner. Afterwards, on 12.09.2017 she was served with a charge sheet

(Annexure-E). During the enquiry of the departmental proceedings the petitioner faced verbal sexual harassment by respondent No.5 i.e. the enquiry officer and also from some other witnesses. However, based on the false allegation and flawed enquiry on 26.09.2018, the respondent No.5 submitted a report with the findings *inter-alia* that the petitioner is not mentally sound to continue her service. Based on the said enquiry report, on 10.01.2019 respondent No.1 issued second show cause notice to the petitioner asking reply as to why she should not be removed from service. After receiving such notice, the petitioner submitted her reply on 06.03.2019 and 18.03.2019 (Annexures G to G-3).

Thereafter, on 23.04.2019 the Ministry constituted "নারী নিপীড়ন এবং যৌন নির্যাতন বিরোধী অভিযোগ কমিটি" (hereinafter referred to as the complaint committee) (Annexure-H), as per guidelines pronounced by the High Court Division in Writ Petition No.5916 of 2008. After coming to know about formation of the aforesaid complaint committee, on 25.04.2019 the petitioner lodged a formal complaint before the complaint committee on sexual harassment committed by respondent Nos. 3, 4 and 9 including all subsequent actions by other respondents in furtherance of the said sexual harassment (Annexure-H-2).

Based on the complaint made by the petitioner, the complaint committee duly enquired into the matter including examination of 23 witnesses produced by the petitioner and prepared enquiry report on 06.08.2019. But the complaint committee did not submit its report within 30 days or within the extended period of another

30 days or suggested any action to be taken based on their enquiry report until filing of the writ petition. As per directives of the High Court Division in Writ Petition 5916 of 2008, the presumption is that the respondents would be deemed to have submitted their report before the higher authority for taking action after 60 days from the date of initiation of the enquiry on the allegation. On the said legal presumption the petitioner filed the instant writ petition and obtained the *Rule Nisi*.

At the time of issuance of the Rule on 05.01.2020, the respondent No.8 was directed to submit a copy of the report of the complaint committee regarding complaint of the petitioner before the Court on or before 10.02.2020.

During pendency of the Rule the petitioner filed an application for stay stating *inter alia* that after being informed about Rule and interim direction dated 05.01.2020, the respondent No.1 issued office order dated 05.01.2020 at about 3.45 p.m. by removing the petitioner from the service (Annexure-L) which is mala fide and furtherance of sexual harassment. The respondents had no legal authority to take any decision against the petitioner during the pendency of the Rule. Therefore, the order of removal from service is also illegal and without lawful authority.

However, the application for stay was kept with the record. The Rule was fixed for hearing by another Bench and the same was heard in part by that Bench. Afterwards, the matter was treated as not heard in part by the Hon'ble Chief Justice vide order dated

30.01.2022. Thereafter, this Bench has fixed the matter for hearing vide order dated 18.10.2022.

During the course of hearing of the matter, the learned Advocate by filing an application on behalf of the petitioner prays for allowing him to hand over the report of the complaint committee dated 06.08.2019 to the custody of this Court.

By filing affidavit in reply against the said application the respondent No.1 stated *inter alia* that on 27.06.2019 fresh complaint committee was constituted as per guidelines passed in Writ Petition No.5916 of 2008 by abolishing the earlier complaint committee constituted on 23.04.2019. It is stated that on 08.08.2019 the newly constituted committee held its first meeting and decided to send a notice to the former abolished committee requesting to provide all necessary documents regarding the complaints of the petitioner, and the former i.e. abolished committee provided documents along with an interim report on 30.09.2019. After scrutinizing the documents and the complaints the newly constituted complaint committee submitted report to the authority concerned on 09.02.2020 and since the earlier complaint committee had no legal existence, the report dated 06.08.2019 prepared by the earlier committee cannot be considered in the eye of law and as such, the application for allowing the petitioner to handover the report is liable to be rejected.

However, this Court vide order dated 27.07.2023 allowed the petitioner to handover the report dated 06.08.2019 subject to

scrutiny on the point of legality and acceptance of the report at the time of hearing and delivery of the judgment as raised by the learned Advocate for the respondent No.1.

By filing an affidavit of compliance the respondent No.8 stated *inter-alia* that the complaint committee constituted on 23.04.2019 was replaced by the newly constituted complaint committee on 27.06.2019 with full members as per guidelines of the High Court Division passed in Writ Petition No.5916 of 2008. So, there is no existence of the earlier complaint committee. However, in the first meeting held on 08.08.2019 the newly constituted committee decided to send a notice to the earlier complaint committee and as such it sent notice asking the abolished committee to provide documents regarding the complaints of the petitioner which was provided by the earlier abolished committee to the newly formed committee on 30.09.2019. The fresh complaint committee after scrutinizing all documents along with the complaint of the petitioner submitted report to the authority concern on 09.02.2020 which may be dealt with in accordance with law.

By filing supplementary affidavit, respondent No.8 has stated *inter-alia* that the High Court Division vide order dated 05.01.2020 directed the Head of the complaint committee as respondent No.8 to submit a copy of the report of the complaint committee by 10th February 2020. In compliance of the direction, the committee formed on 27.06.2019 scrutinized all the documents submitted by the earlier abolished committee and ultimately submitted its report on 09.02.2020. It is stated that another report was submitted on

22.01.2020 by the earlier committee which was abolished by the Ministry on 27.06.2019. The said committee was abolished/dissolved due to serious irregularities in formation of the committee and adoption of its ToR in violation of the guidelines of the High Court Division in Writ Petition No.5916 of 2008. It is stated that the functions of the complaint committee are limited to accept the complaint, enquiry and recommendation on the same. But the earlier committee sent a number of letters to many officials of the Ministry and different Embassies charging them of false allegations with a very rude language and warned them as to contempt of Court in case they failed to comply with their order, which created a severe panic and discomfort to the officials. The working environment of the Ministry was badly affected. At this point of time, the authority took up the matter on 14.05.2019 for revising the ToR in accordance with the guidelines of the High Court Division in Writ Petition No.5916 of 2008 which was finalized on 10.06.2019 and ultimately, the earlier committee was cancelled, and new complaint committee was constituted on 27.06.2019 and after procuring the documents from the earlier abolished committee and after scrutinizing the same submitted its report on 10.02.2020. The new committee came to know with utter surprise that although the earlier committee was no longer and does not any authority to deal with the enquiry and continue the functions, they submitted their report dated 06.08.2019 on 22.01.2020 even after long period of 06 months from the date of its dissolution. As such, the Ministry vide letter No.19.00.0000.855.27.009.17-13 dated 12.02.2020

requested the Registrar of the High Court Division not to accept the report as the same was not sent by the concerned authority. The Ministry also requested not to take any action on the report dated 06.08.2019 submitted on 22.01.2020. Accordingly, this respondent No.8 prays for rejecting the report submitted by the abolished complaint committee and accepting the report dated 10.02.2020 submitted by the newly constituted complaint committee.

Mr. Jyotirmoy Barua, the learned Advocate appearing on behalf of the petitioner submits that the sufferings of the petitioner at her work place knew no bounds on the ground of sexual harassment and non cooperation of the high officials of the Ministry. Moreover, respondent Nos. 3, 4 and 9 have committed sexual harassment to the petitioner in different forms and in furtherance of their unlawful act, they continued with harassment to her including removal from service. He further submits that all the conducts of the aforesaid respondents since 2013 are relating to sexual harassment. He submits that the petitioner after exhausting of all her efforts and without having any remedy, lodged complaints to the complaint committee constituted on 23.04.2019 seeking redress about sexual harassment committed by the aforesaid respondents as per guidelines given by the High Court Division in Writ Petition No.5916 of 2008 reported in 29 BLD (HCD) 415 and the complaint committee, finding the allegations to be true, prepared the report dated 06.08.2019. But the respondents by abusing power refrained from taking action against the respondent Nos. 3, 4 and 9 for harassing the petitioner. Therefore,

the inaction of the respondents without taking punitive action against the respondent Nos. 3, 4 and 9 based on the enquiry report of the committee is liable to be declared to have been illegal and without lawful authority. Regarding the allegation brought against the female officer of the Ministry, Mr. Jyotirmoy Barua, the learned Advocate submits that United State of America in the case of Oncale Vs. Sundowner Offshore Services, Inc et held that sexual harassment can be committed by same sex persons. He then submits that after getting information of issuance of the Rule on 05.01.2020, the petitioner was removed from service, and as such the action of the respondent is liable to be declared to have been made without lawful authority. Lastly, he submits that non compliance of the directives issued by the High Court Division in Writ Petition No.5916 of 2008 requires examination under the judicial review for redress and as such, he prays for making the Rule absolute.

Mr. A.M. Aminuddin, the learned Attorney General appearing on behalf of the respondent Nos. 1 and 8 submits that since the former complaint committee constituted by the Ministry of Foreign Affairs on 23.04.2019 was dissolved on 27.06.2019 by replacing the same with the new complaint committee as per guidelines of the High Court Division in Writ Petition No.5916 of 2008, the said dissolved committee has no valid authority to prepare the report dated 06.08.2019 and submit the same to this Court. The learned Attorney General further submits that the Ministry of Foreign Affairs being the concerned authority was not informed about the

submission of the said report. There are a norms and official disciplinary rules whenever any communication is needed from any office or organization the communication has to be made through the concerned authority which has not been complied with by the dissolved committee. Referring to section 21 of the General Clauses Act, the learned Attorney General also submits that the concerned authority i.e. the Ministry of Foreign Affairs is very much empowered by law to make rules, orders or bye-laws which are included to add, or to amend, vary or rescind its earlier orders, rules or bye-laws. In the instant case, since the earlier complaint committee was defective and working in violation of the ToR and in violation of the Guidelines of the High Court Division in Writ Petition No.5916 of 2008, the Ministry of Foreign Affairs vide order dated 27.06.2019 constituted new complaint committee as per guidelines of the High Court Division by dissolving the earlier committee dated 23.04.2019 and the new committee by procuring the complaints and documents from the earlier dissolved committee dealt with the same in accordance with law and submitted report dated 09.02.2020 finding no basis in the allegations and as such, there is no illegality in formation of the new committee by abolishing the former committee. Accordingly, Mr. A.M. Aminuddin, the learned Attorney General, contends that the former dissolved committee headed by Ms. Naureen Ahsan under no circumstances can look into the matter and submit report to this Court. Hence, the report submitted by the new committee may be dealt with in

accordance with law for adjudication of the matter involved in the Rule.

The learned Attorney General further contends that on plain reading of the averments and the allegations made in the writ petition, it is clear that in filing the writ petition the petitioner actually challenged her removal order from service which cannot be done under the summary jurisdiction of this Court. Referring to the case of Bangladesh Vs. Sontosh Kumar Saha reported in 21 BLC (AD) 94 he also contends that the writ petition is not maintainable. Moreover, the petitioner did not exhaust the procedure for review as spelt out in the Government Service (Discipline and Appeal) Rules, 2018 and the instant writ petition was filed in indecent haste by abusing the process of law and as such, the *Rule Nisi* is liable to be discharged for being premature.

We have considered the submissions made by the learned Advocate for the petitioner and the learned Attorney General on behalf of the respondent Nos. 1 and 8, and the documents and reports submitted by the complaint committee.

From a perusal of the terms of the Rule, it appears that the petitioner has challenged the inaction of the respondents from taking punitive actions against the respondent Nos. 3, 4 and 9 based on the enquiry report of the complaint committee seeking declaration that the same is illegal, without lawful authority and is of no legal effect.

By filing application the petitioner submitted enquiry report dated 06.08.2019 with a prayer for acceptance of the same. But the respondent Nos.1 and 8 by filing affidavit opposed the prayer on the ground that the former complaint committee being dissolved and cancelled by constituting new complaint committee on 27.06.2019, the said prayer for acceptance of the enquiry report of the abolished committee is liable to be rejected. It is also stated that the new committee scrutinized all the documents submitted by the former committee with an interim report on the complaint of the petitioner as well as related documents in departmental proceeding No.09 of 2017 and ultimately submitted its report on 09.02.2020 as per direction given at the time of issuance of the present Rule on 05.01.2020. However, vide order dated 27.07.2023 the petitioner was allowed to handover the report of the former committee subject to scrutiny on the acceptance and legality of the enquiry report at the time of hearing of the Rule.

Now, the pertinent question is that, which one of the enquiry reports has to be accepted for adjudication of the issue involved in the Rule.

Admittedly, the former committee was constituted on 23.04.2019. The said committee fixed up their terms of reference (ToR) and sent a number of letters to many officials of the Ministry and different Embassies charging them about false allegations with a very rude languages and warned them about contempt of Court in case they failed to comply with their order. As such it created a severe panic and discomfort to the officials, and the working

environment of the Ministry was badly affected. In view of the circumstances, the Ministry revised the ToR according to the guidelines of the High Court Division in Writ Petition No.5916 of 2008 which was finalized on 10.06.2019. But the former committee headed by Ms. Naureen Ahsan declined to abide by the new ToR and declared to continue with the ToR fixed earlier by them. It is alleged by the respondent Nos. 1 and 8 that the ToR was made by the former committee in violation and in contradiction of the guidelines of the High Court Division given in Writ Petition No.5916 of 2008. For easy appreciation some of the references are quoted below:

(১) “এই কমিটি মন্ত্রনালয়, মন্ত্রনালয়ের আওতাধীন সংস্থা সমূহ এবং বিদেশে অবস্থিত মিশন সমূহে সংঘটিত বা তদন্তাধীন যে কোন নারী নিপীড়ন ও যৌন নিপীড়নের ঘটনা স্ব-উদ্যোগে নিজস্ব এখতিয়ার নিয়ে তদন্ত কার্যক্রম পরিচালনা করতে পারবে এবং সরকারী কর্মচারী আচরন বিধিমালা, ১৯৭৯ সরকারী কর্মচারী আপীল এবং শৃঙ্খলা বিধিমালা, ২০১৮ ও বিদ্যমান অন্যান্য আইনের আলোকে শাস্তি মূলক ব্যবস্থা কিংবা অন্য কোন রূপ ব্যবস্থা গ্রহন করতে পারবে।”

(২) ” পত্র পত্রিকায় প্রকাশের ফলে কিংবা অন্য কোন মাধ্যমে অবহিত হয়ে এই কমিটি যে কোন নারী নিপীড়ন কিংবা যৌন নির্যাতনের ঘটনা এবং নিপীড়নের সাথে সংশ্লিষ্ট কর্মকর্তা এবং কর্মচারীর বিরুদ্ধে সরকারী কর্মচারী আচরন বিধিমালা, ১৯৭৯ সরকারী কর্মচারী আপীল এবং শৃঙ্খলা বিধিমালা, ২০১৮ ও বিদ্যমান অন্যান্য আইনের আলোকে শাস্তি মূলক ব্যবস্থা কিংবা অন্য কোন রূপ ব্যবস্থা গ্রহন করতে পারবে।”

“(১৪) নারী নিপীড়ন কিংবা যৌন নিপীড়ন সংক্রান্ত কমিটির সিদ্ধান্ত মন্ত্রনালয়ের সিদ্ধান্ত বলে পরিগণিত হবে।”

Drawing our attention to the aforesaid ToR of the former committee, the learned Attorney General submitted that the aforesaid terms of reference is contradictory with the guidelines of

the High Court Division given in Writ Petition No.5916 of 2008. As per guidelines, the committee is allowed to receive complaint, give report on enquiry with recommendation to the authority concerned. As per existing Rules also, only the appointing authority can impose punishment. In view of the proven facts and circumstances, the Ministry of Foreign Affairs by office order dated 27.06.2019 constituted a new complaint committee by cancelling the former committee dated 23.04.2019. It has come in fact that the new committee asked for all reports/documents from the former dissolved committee which was provided on 30.09.2019. The new committee scrutinized all the documents and the complaints of the petitioner in accordance with law and finally submitted its report on 09.02.2020. Admittedly, the formation of the new committee by cancellation of the former committee was not challenged in any forum of law. Moreover, the Ministry of Foreign Affairs through the Assistant Secretary (Rules and Discipline) vide letter dated 12.02.2020 requested the Registrar of the High Court Division not to accept and proceed with the enquiry report of the former committee which has been submitted after 06 months from the date of its cancellation on 27.06.2019.

Since former committee was dissolved and abolished by introducing new complaint committee on 27.06.2019 and since the former committee handed over all documents and complaints of the petitioner to the newly formed complaint committee and since the petitioner did not challenge the formation of the new committee, and since upon examining all pros and cons of the matter, the

newly constituted committee submitted its report, we find substance in the submissions of the learned Attorney General, and as such we have no option but to accept the report dated 09.02.2020 submitted by the present complaint committee.

Now, the only question is whether there has been any inaction on the part of the respondents from taking action against the respondent Nos. 3, 4 and 9 based on the enquiry report dated 09.02.2020 which has been submitted as per direction given at the time of issuance of the *Rule Nisi*.

Upon going through the report vide Annexure-1 to the affidavit-of-compliance filed by the respondent No. 8, it appears that the report contained parawise issue, discussion and findings as well as recommendations. But the allegation of sexual harassment brought against the respondents has not been proved and rather found to be baseless. So, question of taking punitive action against the respondents concerned does not arise at all. Consequently, there was no inaction on the part of the respondents from taking punitive action against the respondent Nos. 3, 4 and 9 based on the enquiry report.

Accordingly, we do not find any substance in the Rule and as such the *Rule Nisi* is liable to be discharged.

In the result, the *Rule Nisi* is discharged without any order as to costs.

Before parting with this judgment, we would like to note that now a days the sufferings of women at their workplaces and

educational institutions knew no bounds. It is true that till now there is no specific legislation on this field. Consequently, the matter was brought before the High Court Division in Writ Petition No.5916 of 2008. The High Court Division appointed one prominent Senior Advocate Mr. Mahmudul Islam as Amicus Curiae and also appointed Ms. Sara Hossain and Mr. Probir Neogi, the learned Advocates as Intervenors. The High Court Division vide judgment and order dated 14.05.2009 made the Rule absolute giving directives in the form of Guidelines to prevent or deter offences regarding sexual abuse and harassment, and to provide effective measures for prosecution of the offences regarding sexual harassment resorting to all available legal and possible institutional steps. In the guidelines one of the key measures has been directed to follow by the concerned authority of every educational institution or workplace in both public and private sectors is formation of complaint committee. The jurisdiction of the complaint committee has been specified in the guidelines. As such, we hope that the complaint committee shall discharge their duties bestowed upon them by the guidelines of the High Court Division in writ petition in accordance with law.

With the aforesaid observations, the *Rule Nisi* is discharged. However, there will be no order as to costs.

Md. Khairul Alam, J.

I agree.