

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

WRIT PETITION N0.155 OF 2020.

IN THE MATTER OF:

Mrs. Shahela Nazmul

.....Petitioner.

-Versus-

Government of the People's Republic of
Bangladesh, represented by its Secretary,
Ministry of Home Affairs, Bangladesh
Secretariat, Ramna, Dhaka and others.

...Respondents.

Mr. Mahbub Shafique, Advocate with
Mr. Md. Motiur Rahman, Advocate

..... For the Petitioner.

Mr. A.K.M. Amin Uddin, D A.G
Ms. Anna Khanom Koli, A.A.G. and
Mr. Md. Shaifour Rahman Siddiquie, A.A.G

..... For the Respondents.

Mr. S.M. Abdur Rouf, Advocate

...For the Anti-Corruption Commission.

Present:

**Mr. Justice Md. Nazrul Islam Talukder
And**

Mr. Justice Md. Mostafizur Rahman

Heard and judgment on: 17.02.2022.

Md. Nazrul Islam Talukder, J:

On an Application under Article 102 of the
Constitution of the People's Republic of Bangladesh,
this Rule Nisi, at the instance of the writ petitioner,
was issued calling upon the respondents to show
cause as to why the initiation of the Second Inquiry
vide Memo No. দুদক / অনুঃ ও তদন্ত-১ / অনুঃ ৭৯ / ঢাকা /

੨੦੧੧ / ੧੨੯੯੦ dated 31.03.2019 issued under the signature of the Respondent No.03, Memo No.00. 01. 2600. 603. 03. 035. 19. 25374 dated 27.06.2019, Memo No.00. 01. 2600. 603. 03. 035. 19. 29476 dated 24.07.2019, Memo No. 00. 01. 2600. 603. 03. 035. 19. 31009 dated 05.08.2019 and Memo No.00. 01. 2600. 603. 03. 035. 19. 44598 dated 17.11.2019 issued under the signature of the Respondent No.4 **(Annexure-A, A-1, A-2, A-3 and A-4)**, should not be declared to have been issued without lawful authority and are of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

It may be noted that this court, by an order dated 15.01.2020, issued the Rule and stayed the operation of the impugned notices for a period of 3 (three) months. Subsequently, it was further extended for a further period of 3 (three) months from 15.12.2021.

Being aggrieved by the impugned order of this court, the Anti-Corruption Commission preferred Civil Petition For Leave To Appeal No. 474 of 2020 before the Appellate Division and the learned judges of the Appellate Division, by order dated 20.07.2020, did not interfere with the order of stay passed by the High Court Division.

It appears from the record that the Anti-Corruption Commission, by an order dated 31.03.2019, issued a notice under Section 26(1) of the Anti-Corruption Commission Act, 2004 (Annexure-A) to the writ petition directing the petitioner to submit wealth statement with a direction that if the petitioner fails to submit the wealth statement within the time-frame given by the Anti-Corruption Commission, appropriate legal action will be taken against him under

Section 26(2) of the Anti-Corruption Commission Act, 2004.

Following the notice issued by the Anti-Corruption Commission, the petitioner submitted wealth statement before the Anti-Corruption Commission on 03.04.2019 and the same was accepted by the Commission on 17.04.2019.

Having received the wealth statement submitted by the petitioner, the Anti-Corruption Commission again submitted a notice dated 27.06.2019 as contained in **(Annexure-A-1)** to the writ petition directing the petitioner to submit the necessary papers and documents in support of her wealth stated in the wealth statement, her passport and the necessary papers and documents in support of the vehicle she purchased.

The learned Advocate for the petitioner could not show any evidence that she complied

with the notice (**Annexure-A-1**) and submitted the necessary papers and documents asked for by the Anti-Corruption Commission.

Thereafter, the Commission, by an order dated 24.07.2019, again served notice upon the petitioner as contained in (**Annexure-A-2**) to the writ petition for submitting necessary papers and documents in support of the immovable properties which were mentioned in the wealth statement dated 17.04.2019.

It is evident from the record but this notice was also not complied with by the petitioner. Thereafter, on 05.08.2019, the Anti-Corruption Commission again served notice upon the petitioner as contained in (**Annexure-A-3**) to the writ petition for submitting the necessary papers and documents in support of the immovable

properties as mentioned in the wealth statement dated 17.04.2019.

Having failed to pay heed to the notice **(Annexure-A-3)**, the Anti-Corruption Commission lastly submitted a notice dated 17.11.2019 as contained in (Annexure-4) upon the writ-petitioner directing the petitioner to submit necessary papers and documents in support of the loan taken from 2010 to 2015 and necessary papers and the registers with regard to transactions, purchases and sales of her business establishment but no necessary papers required for inquiry were supplied to the Anti-Corruption Commission.

Being aggrieved by the notices **(Annexure-A to A-4)**, the petitioner approached this court with an application under Article 102 of the Constitution of the People's Republic of Bangladesh and obtained

this Rule along with an order of stay of the impugned notices.

At the very outset, Mr. Mahbub Shafique, the learned Advocate along with Mr. Md. Motiur Rahman, the learned Advocate for the petitioner, very categorically submits that the impugned notices as contained in **(Annexure-A-1 to A-4 to the writ petition)** are illegal, without lawful authority and are of no legal effect since the selfsame notice as contained in **(Annexure-A to the writ petition)** was initially issued by the Anti-Corruption Commission directing the petitioner to submit her wealth statement and the same was duly complied with by the petitioner and the petitioner submitted wealth statement with a declaration that she has submitted all the information in the wealth statement as per requirement of the Anti-Corruption Commission as such the issuance of repeated and successive notices as contained in **(Annexure-A-1 to A-4 to the writ petition)** are

illegal, without lawful authority and are of no legal effect.

He next submits that if the Commission is not satisfied with the wealth statement, there is a provision for filing case against the writ petitioner but the Anti-Corruption Commission issued four repeated and successive notices upon the petitioner for submitting wealth statement, these sorts of notices are not legal and proper in the light of judgment and order passed by the Appellate Division in the case of Md. Ashraful Haque vs The Anti-Corruption and others, reported in 37 BLD(AD)(2017)1 wherein it was held that the issuance of repeated notice upon any person by the Anti-Corruption Commission for submitting wealth statement is mala fide.

He candidly submits that if the Anti-Corruption Commission is not satisfied with the information given in the wealth statement, they can choose to lodge a case against the petitioner but instead of doing that the Anti-Corruption Commission with

mala fide intention served several notices upon the petitioner, which are mala fide, illegal and not sustainable in the eye of law.

He then submits that a reference to the declaration to the wealth statement submitted by the petitioner indicates to the effect that প্রত্যয়ন করা যাইতেছে যে, উপরি-উক্ত সম্পদ ও দায়-দেনার বিবরণী আমার জ্ঞান ও বিশ্বাস মতে সত্য, এমন কোন সম্পদ বা দায়-দেনার ঋণ এই হিসাব বিবরণী হইতে গোপন করা হয় নাই যাহাতে আমার নিজের অথবা আমার স্ত্রী, স্বামী, পুত্র, কন্যা, ভ্রাতা, ভগ্নী বা অপর কোন ব্যক্তির মাধ্যমে আমার স্বার্থ আছে, so in view of the aforesaid declaration, it is crystal clear that the petitioner has submitted all the information and nothing has been made incomplete from disclosing any information with respect to wealth to the Anti-Corruption Commission as such the impugned notices are nothing but issued with a view to making harassment to the petitioner.

He lastly submits that the repeated notices as contained in (**Annexure A, A-1 to A-4 to the writ petition**), have disrupted the activities of the

petitioner in doing her business smoothly and properly, so these sorts of notices should not be given upon the petitioner as those appear to be mala fide in nature as such all the repeated notices should be declared illegal, without lawful authority and are of no legal effect.

On the other hand, Mr. S.M. Abdur Rouf, the learned Advocate appearing for the Anti-Corruption Commission, has submitted affidavit-in-opposition denying all the statements and grounds taken in the writ petition and categorically submits that an initial notice under Section 26(1) of the Anti-Corruption Commission Act, 2004 as contained in **(Annexure-A to the writ petition)** was issued upon the petitioner by the Anti-Corruption Commission to submit wealth statement but the other notices as contained in **(Annexure-A-1 to A-4 to the writ petition)** were issued directing petitioner to submit necessary papers and documents in support of the information disclosed in the wealth statement, so the subsequent

notices for having necessary papers and documents for the purpose of inquiry cannot be termed as successive and repeated notices because no notice as like as the notice under Section 26(1) was served upon the petitioner successively and/or repeatedly as such the legal decision as referred to by the learned Advocate for the petitioner is not applicable to the facts and circumstances of the present writ petition.

He then submits that since the necessary papers and documents are not submitted before the Commission by the writ petitioner, the Commission submitted notices as contained in (**Annexuer-A-1 to A-4 to the writ petition**) for the necessary papers and documents with a view to carrying out proper inquiry into the matter and if the necessary papers and documents are not supplied properly how the Anti-Corruption Commission can make proper inquiry into the matter and under the circumstances, there is nothing to interfere with the notices directing the petitioner to submit the necessary papers and

documents as such the notices as contained in **(Annexuer-A-1 to A-4 to the writ petition)** are not illegal and those are very much maintainable and sustainable in the eye of law.

He next submits that the petitioner upon receiving the notices as contained in **(Annexuer-A-1 to A-4 in the writ petition)** did not submit any application before the Commission stating that she has no other papers and documents apart from those which have been submitted, placed or stated in the wealth statement and if the petitioner would have filed an application before the Commission stating that she has no other papers and documents, then there was no necessity to issue any notice to the petitioner for papers and documents.

He lastly submits that the impugned notices were actually issued not for harassing the petitioner but for giving an opportunity to the petitioner so that no innocent person is implicated in any case to be filed by the Anti-Corruption Commission and that the

impugned notices were served to give the safeguard to the petitioner for the petitioner could have filed all the papers and documents before the Anti-Corruption Commission and if the Anti-Corruption Commission is satisfied with the papers and documents, they will not proceed further by initiating any case against the petitioner.

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing for the Respondents, has adopted the submissions advanced by the learned Advocate for the Anti-Corruption Commission.

We have gone through the writ petition filed by the petitioner under Article 102 of the People's Republic of Bangladesh and perused the necessary materials annexed thereto. We have also perused and examined the necessary papers and documents annexed in the writ petition. We have also examined and considered the affidavit-in-opposition submitted

by the Anti-Corruption Commission. We have also heard the submissions advanced by the learned Advocates for the respective parties and considered their submissions to the best of our wit and wisdom.

On going through the materials on record, we find that an officer of the rank of Deputy Director of the Anti-Corruption Commission issued the notice upon the petitioner under Section 26(1) of the Anti-Corruption Commission Act, 2004 directing her to submit wealth statement and the petitioner upon receiving the notice complied with the notice by submitting wealth statement to the Commission. On perusal of the wealth statement of the petitioner, the Anti-Corruption Commission came to know that some papers and documents in support of the wealth statement and information were not submitted with the wealth statement. Following the same, the Anti-Corruption Commission submitted a notice as contained in **(Annexure-A-1 to the writ petition)** for submitting necessary papers and documents but no

reply was given on behalf of the petitioner to that notice. Thereafter, the second notice as contained in **(Annexure A-2 to the writ petition)** was issued upon the petitioner but she did not respond to the same as well. Then the third notice as contained in **(Annexure-A3 to the writ petition)** was issued but the same was also not replied. Then fourth notice as contained in **(Annexure-A4 to the writ petition)** was issued upon the petitioner but no response was given to that notice.

On perusal of the materials on record, we find that no application was filed by the petitioner to the Anti-Corruption Commission intimating that she had no other papers and documents in support of the information required for.

As per submission of the learned Advocate for the petitioner, the repeated notices as contained in **(Annexure A-1 to A-4 to the writ petition)** as issued upon the petitioner are mala fide because the petitioner has already filed the wealth statement and

if the Commission is not satisfied with the information made in the wealth statement, they can choose to lodge an F.I.R against the petitioner but there is no necessity of issuing repeated notices as contained in **(Annexur-A1 to A4 to the writ petition)** upon the petitioner, which are mala fide and are not sustainable in the eye of law. As per submission of the learned Advocate for the petitioner, the issuance of repeated notice upon any person by the Durnity Daman Commission for submitting wealth statement is mala fide according to the decision taken in the case of **Md. Ashraful Haque vs The Anti-Corruption Commission and others reported in 37BLD(AD)(2017)1.**

We have stated earlier that Anti-Corruption Commission issued a notice under Section 26(1) of the Anti-Corruption Commission Act, 2004 upon the petitioner directing the petitioner to submit wealth statement. Upon receiving the notice, the petitioner duly submitted wealth statement before the

Anti-Corruption Commission. On scrutiny, the Anti-Corruption Commission found that some papers and documents were not submitted in support of the wealth statement and information disclosed therein. The Anti-Corruption Commission thereafter issued notice as contained in (**Annexure-A1 to the writ petition**) directing the petitioner to submit necessary papers and documents required for effective inquiry into the matter. Anyway, the petitioner did not respond to the same. Finding no reply, the Anti-Corruption Commission issued three consecutive notices but no papers and documents were submitted before the Anti-Corruption Commission as asked for. Now question arises as to whether or not the subsequent notices for papers and documents can be termed as repeated/successive notice for submitting the wealth statement? Before coming to a decision in this matter, let us see what is the proposition of law in the matter of inquiry in the Anti-Corruption Commission Act, 2004 (in short ACC Act, 2004).

It is apparent that as per Section 17 of the Anti-Corruption Commission Act, 2004, the Anti-Corruption Commission shall enquire into and conduct investigation of offences mentioned in the schedule and file cases on the basis of inquiry or investigation and conduct prosecution of the case before the Court of Special Judge.

As per Section 19 of the Anti-Corruption Commission Act, 2004, notices upon the accused or any person may be served if the Commission thinks necessary to hear any person connected with the allegations. And the notices upon the witnesses may be served under Section 19 of the ACC Act, 2004 read with Rule 20 of the ACC Rules, 2007.

Section 22 of the Anti-Corruption Commission Act, 2004 indicates that if the Commission thinks it proper that during inquiry or investigation of an allegation of corruption, it is necessary to hear any person connected with the allegation of corruption,

the Commission may provide him/her a reasonable opportunity to be heard.

It may be noted that the inquiry is a fact finding process. If upon inquiry, prima-facie allegation is not satisfactorily found or traced out against any person, in that case, the Anti-Corruption Commission will terminate the inquiry proceeding. But in the instant case, notice has been served upon the petitioner for holding inquiry into the matter and the consecutive notices as contained in (Annexure-A-1 to A-4) were issued upon the petitioner for submitting papers and documents in support of the wealth mentioned in the wealth statement. The inquiry proceeding against the petitioner has not been finished as yet and the Anti-Corruption Commission has not terminated the inquiry proceeding stating that allegations against the petitioner have not been found or established.

It is evident from the record that the ACC issued 04(four) notices upon the petitioner for submitting papers and documents in support of

wealth mentioned in the wealth statement. Though the petitioner has not submitted any papers and documents following the notices issued by the ACC, the ACC could have filed the case against the petitioner in accordance with law. It is now well settled that there may be irregularity or procedural error at the stage of inquiry or investigation but the same can't be the ground to declare the impugned notices illegal, without lawful authority and are of no legal effect.

Our considered view is that repeated/successive notices are that notices which are submitted upon the petitioner on the self-same matter with self-same cause of action after holding inquiry and terminating the inquiry proceeding. But in the instant case, one notice under Section 26(1) of the ACC Act, 2004 was served upon the petitioner but no repeated and/or successive notices under Section 26(1) of the Anti-Corruption Commission Act, 2004 were submitted upon the petitioner for submitting wealth statement.

The notices as contained in **(Annexure-A1 to A4)** were submitted only for submitting necessary papers and documents to the ACC for the purposes of carrying out inquiry into the matter. Accordingly, we have no hesitation to hold the view that the notices served upon the petitioner as contained in **(Annexur-A1 to A4)** cannot be termed as repeated and/or successive notices at all.

Having considered all the facts and circumstances of the case, the submissions advanced by the learned Advocate for respective parties and the proposition of law cited and discussed above, we are of the view that the concept of law that has been settled by the Appellate Division is not applicable to the fact of the present case. Under the circumstances, we do not find any merit in this Rule.

Accordingly, we are not inclined to make the Rule absolute in the instant case.

Consequently, the Rule is discharged.

The order of stay granted at the time of issuance of the Rule stands vacated.

The Anti-Corruption Commission is directed to proceed with the case in accordance with law.

Communicate the judgment and order to the respondents at once.

Md. Mostafizur Rahman, J:

I agree.