

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

Writ Petition No.4437 of 2021

In the matter of:

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

-And-

In the matter of:

Tafsir Mohammad Awal

----- **Petitioner**

-Versus-

The Government of the People's Republic of Bangladesh, represented by the Secretary, Security Services Division, Ministry of Home Affairs, Secretariat, Bhaban Bangladesh Secretariat, Ramna, Dhaka-1000 and others.

----- **Respondents**

Mr. Mostafizur Rahman Khan, Advocate with

Mr. Saqeb Mahbub, Advocate

----- **For the Petitioner.**

Mr. A.K.M. Amin Uddin, D.A.G with

Ms. Anna Khanom Koli, A.A.G and

Mr. Md. Shaifour Rahman Siddique, A.A.G

..... **For the Respondents.**

Mr. Md. Khurshid Alam Khan, Senior Advocate

----- **For the Anti-Corruption Commission.**

Present:

Mr. Justice Md. Nazrul Islam Talukder

And

Mr. Justice Md. Mostafizur Rahman

Heard & Judgment on: 24.02.2022

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 petitioner, was issued calling upon the respondents to show cause as to why the action of the respondents preventing the petitioner from going outside of Bangladesh should not be declared to be without lawful authority and is of no legal effect and as to why the impugned Memo No.00.01.0000.502. 01.037.20.21479 dated 04.10.2020 should not be declared to be without lawful authority and is of no legal effect and as to why the respondents shall not be directed not to create any embargo or put any bar upon the petitioner or otherwise cause any harassment in respect of going outside of Bangladesh or re-entering the country and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts leading to issuance of the Rule in this writ petition are that the petitioner is a dual citizen of

Bangladesh and the United States of America currently residing in Bangladesh and an established businessman in the FMCG sector. He is one of the Directors of M.F. Consumers Ltd. He is also one of the Directors of Multimode Group which is one of the most prominent business conglomerates in Bangladesh with a presence in agriculture, banking, insurance, consumer goods, energy, hospitality, food & beverage, manufacturing, real estate, textiles, transportation, chemicals and fertilizers, plastics, IT and telecom.

The petitioner is a regular traveler abroad and wanted to go to London to attend birthday of his daughter who resides in the UK. By virtue of a holding a U.S. Passport, the petitioner does not require an entry permit to visit to UK and as such, the petitioner obtained a confirmed business class return Air Ticket.

The petitioner went to the airport on 24.01.2021 at 10.00 am to board the BG I flight scheduled to take off at 13.25 am for London. He completed his check –in from the counter of Biman Bangladesh Airlines in Hazrat Shahjalal International Airport and proceeded for immigration after being issued a boarding pass. When he presented his passport to the concerned immigration officer, the said officer told the petitioner that they had instruction from their officials not to allow him to leave the country. The Immigration Officer kept the petitioner’s passport for 2 hours. Thereafter, they returned his passport informing that he cannot travel abroad and escorted him out. His Boarding Pass was marked with the inscription “Pax deleted and off loaded by DAC IMMO”.

It is stated in the writ petition that by vide memo No.00.01.0000.502.01.037.2016027 dated 19.08.2020

the respondent No.3 ask the petitioner to be present in the respondent No.3's office to give petitioner's statements on the allegation of transferring crore of money by opening account in Newyork and London and other various corruption allegations. Subsequently, the petitioner duly complied with the letter under memo No.00. 01. 0000. 502. 01. 037. 2016027 dated 19.08.2020 and made his presence before the respondent No.4. The petitioner came to know that the Respondent No.3 by vide memo No.00.01.0000.502.01.037.20.21479 dated 04.10.2020 without filing any case against him has imposed a travel ban on him. The petitioner was not informed about the travel ban nor was he given any chance to explain as to why such a travel ban should not be issued. The petitioner somehow obtained a photocopy of the travel ban request issued by the Respondent

No.3; the petitioner after being aware of the travel ban imposed by the respondent No.3 made representation vide a letter dated 28.02.2021 to withdraw the travel ban from the petitioner. The petitioner on the said letter also stated that he always complied with the request made by the respondent No.3 to attend the ACC office and also provided with the whatever information the respondent No.3 asked him to provide and that the petitioner is willing to be present in future at any inquiry if required by the respondent No.3. The petitioner also forwarded the said letter to the respondent No.2. The petitioner even made representation to the respondent No.1 vide a letter dated 11.03.2021 to withdraw the travel ban imposed against the petitioner; the petitioner again made representation before the respondent No.3 vide a letter dated 21.03.2021 to withdraw the travel ban

against the petitioner as the petitioner's 2 years old daughter is in the UK and the petitioner urgently needs to go to the UK to see his daughter. The petitioner also made representation vide a letter dated 22.03.2021 to the respondent No.2 to withdraw the travel ban. However, the petitioner has not received any response from the respondent Nos. 2 and 3 till date; the petitioner obtained a Police Clearance Certificate from the concerned police station. It is clear from the Police Clearance Certificate that there is no adverse information against the petitioner.

Being aggrieved by the travel ban imposed against the petitioner, the petitioner approached this court with an application under Article 102 of the Constitution of the Peoples' Republic of Bangladesh and obtained this Rule.

At the very outset, Mr. Mostafizur Rahman Khan, the learned Advocate along with Mr. Saqeb Mahbub, the learned Advocate appearing for the petitioner, submits that there are no criminal cases filed against the petitioner and there is no warrant of arrest against him from any Court as such the impugned order issued by the Respondent No.3 and the very act of barring the petitioner from going abroad is without lawful authority and of legal effect.

He next submit that the Anti-Corruption Commission Act, 2004 and even the Anti-Corruption Commission Rules, 2007 does not provide any no express or implied authority to the Respondent Nos. 3 & 4 to prevent any person form going outside of Bangladesh based on suspicion as such the impugned Memo has been passed without lawful authority and bears no legal effect.

He then submits that the movement to and from Bangladesh is an inalienable fundamental right for every citizen as guaranteed under Article 36 of the Constitution; therefore, any action restraining a citizen from going outside Bangladesh is a gross violation of Article 36 of the Constitution and is liable to be declared to have been made without lawful authority and is of no legal effect.

He candidly submits that even though the impugned Memo was issued long back on 04.10.2020 after which long 6(six) months have passed, no concrete allegation has been formed against the petitioner and no case has been filed, as such the restriction on his travel is completely unreasonable and is violation of Article 36 of the Constitution.

He has pointed out that the impugned memo constitutes no assertion as to how public interest will

be served if the petitioner is prevented from going abroad, as such the impugned memo does not satisfy the requirement of Article 36 of the Constitution.

He additionally submits that Article 36 of the Constitution should be considered in line with Article 13 of the Universal Declaration of Human Rights, which states that any citizen of the country has the right to leave his country and return to it; the action of the Respondents is a violation of the petitioner's right under the said Article of the UDHR. Therefore, Article 13 of the Universal Declaration of Human Rights does not allow any restriction on the freedom of movement on any person even in his own country.

He very strongly submits that if any organization of the State wants to stop the petitioner from leaving the country, then it must start a specific criminal case against him and get a custodial order by a court of law

under the laws of the land, without which Article 36 will become nugatory; as such without initiating a specific criminal case there is no scope for a person to be barred from going abroad even if he may be required to stand trial at a future date.

He categorically submits that the petitioner is the citizen of this country and as such is entitled to leave and re-enter Bangladesh without any valid reason as such imposition of such restrictions is a violation of fundamental rights guaranteed under the constitution.

He emphatically submits that the action of the respondents in putting an embargo upon the petitioner from going abroad is nothing but a colourable and arbitrary exercise of power of the respondents and this petitioner fails to understand as to why he as a private citizen has been restricted from leaving the country.

He vigorously submits that the aforesaid action of the law enforcement agencies restraining the petitioner from going abroad is illegal and arbitrary and the same amounts to colourable exercise of power.

He lastly submits that the impugned memo No. 00.01.0000/502/01/037/20/21479 dated 04.10.2020 has no bearing in law as neither the Anti-Corruption Commission Act, 2004 nor the Anti Corruption Commission Rules 2007 provides for any such restriction, as such the impugned memo does not satisfy the requirement of Article 36 of the Constitution.

Mr. Mustafizur Rahman Khan, in support of his submissions, has referred to legal decisions taken in the cases of H.M Ershad vs Bangladesh reported in 7 BLC(AD)67, Bangladesh vs Allama Delwar Hossain

Sayeedi reported in 16 BLC(AD)51, Mohammad Tajul Islam vs Bangladesh and others reported in 25 BLT(HC)195 and Arif Hossen vs Bangladesh reported in 25 BLC(HC)337.

In the case of H.M Ershad vs Bangladesh reported in 7 BLC(AD)67, it has been held that “... the universal norms of freedom respecting rights of leaving the country and returning have been recognized in Article 36 of our Constitution. Therefore, there is full application of Article 13 of the Universal Declaration of Human Rights to the facts ...”.

In the case of Bangladesh vs Allama Delwar Hossen Sayeedi reported in 16 BLC(AD)51, it has been decided that “if the Government wants to stop the petitioner from leaving the country then it must start a specific criminal case against him and get a custodial order by a court of law under the laws of the land. If

the Government is allowed to restrict a person from going abroad at its discretion simply because he is going to make propaganda against Government policy or because he may be required to stand trial at a future date, then Article 36 will become nugatory. This court being the Guardian of the Constitution cannot condone such practice.”

In the case of Mohammad Tajul Islam vs Bangladesh and others reported in 25 BLT(HC)195, it has been laid down that “Therefore such restriction or embargo is illegal and unconstitutional if any other authorities preventing a citizen going abroad without assigning any reason that would violate of fundamental rights guaranteed by the Constitution.”

In the case of Arif Hossen vs Bangladesh reported in 25 BLC(HC)337, it has been spelt out that “In this particular case we find that no case has been initiated

against the petitioner, even First Information Report (FIR) has not been lodged against the petitioner and the allegation as alleged by the ACC is still under inquiry. We are of the view that before lodging any FIR the ACC has the right to ask the petitioner to appear before them for the purpose of proper inquiry, but it must be done when the person is available. For the purpose of mere inquiry a fundamental right as guaranteed by Article 36 of the Constitution cannot be curtailed by the ACC or any authority. Thus, we are of the view that the petitioner should be allowed to enjoy his fundamental right as guaranteed under Article 36 of our Constitution. The petitioner should be allowed for his necessary treatment and other purpose.”

On the other hand, Mr. Md. Khurshid Alam Khan, the learned Advocate appearing of the Anti-Corruption Commission, submits that the petitioner is a dual

citizen of Bangladesh and the United States of America; this Court by its order dated 05.05.2021 passed in Writ Petition No.4437 of 2021 directed the respondents to allow the writ petitioner to leave and re-enter in Bangladesh for a period of 3(three) months from date, if no order of restrain or warrant of arrest is pending against him and made the Rule returnable within 4(four) weeks from date; and after the said order of this Division, the petitioner was allowed to leave the country; however, till date the petitioner's whereabouts is unknown to the court and to the respondent No.2, nor does he furnish any information to that regard before any court of law or the office of the Durnity Daman Commission and as such the Rule should be discharged.

Mr. Khan with reference to the legal decision taken in the case of Durnity Daman Commission vs GB

Hossain and others reported in 74 DLR(AD) (2022)1, submits that the fundamental right guaranteed under Article 36 of the Constitution is non-absolute right; the right to leave one's country has therefore never been considered an absolute right; the right may be restricted in certain circumstances; restriction may be imposed on travel in order to prevent exit from the country by persons who leave quickly to avoid due process of law and as such, the Rule is liable to be discharged.

We have gone through the writ petition and perused the materials annexed with the writ petition. We have also heard the learned Advocates for the respective parties at length and considered their submissions to the best of our wit and wisdom.

It is now well settled that freedom of movement as envisaged in our Constitution is not absolute

meaning thereby that the same is subject to certain limitation. Despite the long standing ideal of free movement, it has in practice always been subject to State restrictions. The right to leave one's country has never been considered as absolute right. The requirement of restriction to be reasonable means that the High Court Division has the power to Judge the reasonableness of restrictions in question. The reasonableness demands proper balancing of the fundamental rights of the people. It is the judiciary which has to finally judge the reasonableness of restriction. The restriction can be imposed by law only, not by an executive order. The aforesaid view finds support in the case of Chintanmon Rao V. State of Madhya Pradesh reported in AIR 1951 SC 118.

In the case reported in 74DLR(AD)1, it has been decided by the Appellate Division that under Article 36 of the Constitution freedom of movement is one of the fundamental rights guaranteed to every citizen of the country which cannot be abridged or denied arbitrarily on mere liking or disliking without any specific law authorizing lawful justification for this purpose. The reasonableness is to be determined by an objective standard and not by subjective one.

It is axiomatic that there is no provision in the ACC Act, 2004 and the Rule in the ACC Rules, 2007, by which the ACC is authorized or empowered to pass any order putting any embargo upon the petitioner to leave and re-enter in Bangladesh.

In this regard, the decision of the Appellate Division is that restriction may be imposed on travel in

order to prevent exit from the country by persons who leave quickly to avoid due process of law. However, this would be subject to confirmation by the appropriate court within a period of 3 working days from the date of issuing the order putting any embargo upon the petitioner to leave and re-enter in Bangladesh.

In view of the above, the impugned order putting embargo upon the petitioner to leave Bangladesh has no legal efficacy and effectiveness unless the impugned order is approved or appropriate order is passed by the concerned court of jurisdiction putting any embargo upon the petitioner to leave and re-enter in Bangladesh.

However, the Anti-Corruption Commission shall have liberty to go to the concerned court of

jurisdiction for proper order of embargo upon the petitioner if the ACC thinks fit and proper having sufficient reasons to do the same and it may proceed with the inquiry in accordance with law if required.

Having considered all the facts and circumstances of the case, the submissions and the propositions of law settled by Appellate Division, the Rule may be disposed of in the light of judgment and order passed in the case reported in 74DLR(AD)1.

It appears from the Rule issuing order dated 05.05.2021 that the respondents were directed to allow the petitioner to leave and re-enter in Bangladesh for a period of 3(three) months from date, if no order of restraint or warrant of arrest in pending against him but the petitioner went outside the country without extending the period of the direction

and without intimating the court about the whereabouts of the petitioner. Under the circumstances, the petitioner is directed to be more cautious and respectful to the law and Court of the country in future.

In consequence thereof, the Rule is disposed of with the aforesaid observations and directions.

Let a copy of this judgment and order be communicated to the concerned respondents at once.

Md. Mostafizur Rahman, J:

I agree.