

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

Writ Petition No. 3842 of 2025

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. Lutfor Rahman Miah and another
....Petitioners

Versus

The Government of Bangladesh, represented
by the Secretary, Ministry of Law, Justice and
Parliamentary Affairs, Bangladesh Secretariat,
Dhaka and others

....Respondents

Mr. M. Moksadul Islam, Advocate with
Mr. Md. Anisor Rahman, Advocate
....For the Petitioners

Mr. Md. Jasim Sarker, D.A.G. with
Mr. Md. Geas Uddin Gazi, A.A.G.,
Mr. Md. Shahadat Hossain Adil, A.A.G.,
Mr. Md. Shamsil Arefin, A.A.G. and
Ms. Laboni Akter, A.A.G.
.... For the respondent No. 1

Ms. Quamrun Nessa (Ratna), Advocate
.... For the respondent Nos. 2-4

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

The 13th day of March, 2025.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, the present petitioners challenged the legality of the impugned letters dated 23.01.2025 (received on 13.02.2025) bearing Memo Nos. 00. 01. 0000. 502. 01. 010. 23. 4233 and 00. 01. 0000. 502. 01. 010. 23. 4234 (Annexures-D & D-1), was issued by Respondent No. 4, most arbitrarily and without any lawful authority. In the above context, the petitioners also

challenged the vires of section 26 of the Anti-Corruption Commission Act, 2004 (Act No. V of 2004).

This application has been filed as by a letter dated 04-12-2023, the Anti-Corruption Commission (in short ACC) requested the petitioners to provide information about their wealth, against which petitioner No. 1 visited the ACC office and provided information to the best of his memory. However, the officer continued to request various documents and deeds for months, to which the petitioners complied. The officer showed particular interest in the property the petitioners inherited from their parents and the property they had constructed on their ancestral land, though petitioners complied as best as they could. However, another letter dated 13.02.2025 issued under Section 26 of the Anti-Corruption Commission Act, 2004 asked the petitioners to submit their property details within 21 days. In this context after 24 years of retirement from his service, it is difficult for the petitioners to provide detailed information as other wealth from different sources such as ancestral property and income from other family members has become mixed up.

However, on the query, Ms. Quamrun Nessa (Ratna), the learned Advocate for the respondent Nos. 2-4 bring notice to this Court that earlier the same point has been decided in a decision passed by the Appellate Division reported in 60 DLR (AD)-172.

Mr. M. Moksadul Islam, the learned Advocate appearing for the petitioners knowing about the decision submits that the issue of the virus in Section 26 was not in question. Only the **ratio decidendi** from the Appellate Division of the Supreme Court of Bangladesh has mandatory application in the High Court Division (Article 111), but not the **obiter dicta**, especially when the dispute in question was not the subject matter in the Appellate Division.

He submits that Criminal jurisprudence regarding the subject matter was developed in the case of **Woolmington vs. DPP [1935] AC 462**. In Bangladesh, it was also adopted through Section 132 of the Evidence Act, which was enacted in 1872, and Section 342 of the Code of Criminal Procedure, adopted in 1861. The Constitution of Bangladesh was adopted in 1972. According to him an act that leads to another illegal act cannot be allowed to continue in the spirit of criminal jurisprudence, as discussed in this Writ Petition.

We have considered the facts and submissions made by the parties and examine the the above-noted decision.

In this context, Ms. Quamrun Nessa (Ratna) Advocate for the respondent Nos. 2-4 took us to the decision reported in 60 DLR (AD)-172

and submits the issue raised by the petitioner in this case has been discussed in the above cited decision. Having gone through the judgment, we would like to quote few paragraphs of the judgment delivered in the case reported in 60 DLR (AD) as under:

Paragraph No. 24 of the above decision, it has been observed/discussed that:

One of the thrusts of the argument of the learned Counsel for the respondent is that Form 5 of the Schedule of the Rules is *ultra vires* of section 26 of the Act as there is no scope for "হির বিশ্বাস" under section 26 wherein the appellant was required to form a satisfaction on the basis of information or after necessary investigation if satisfied as provided in under section 26 of the Anti-Corruption Commission Act, 2004, inasmuch as the satisfaction is to be arrived at upon "তদন্ত" as detailed in section 26 of the Act.

Relevant portion of the paragraph No. 30 of the cited decision, further, it has been observed/discussed that:

...
It appears from the notice in Form 5 "অনুসন্ধান" and "হির বিশ্বাস" in place of the words "তদন্ত" and "সন্তুষ্ট" in section 26 of the Act and Rule 17 of the Rules, 2007 having the same consequence as to the submission of the wealth and property statement under the law for mere initiation and information gathering process at the preliminary stage and the textual difference in the said words in section 26, Rule 17(1) and Form 5 under reference such slight inaccuracy in using the certain words in the notice would not make any difference in substance and could be read and construed harmoniously and, in that view of the matter, the wording used in the notice can by no stretch of the imagination be termed as inconsistent with the content thereof and the requirement of section 26 of the Act or Rule 17 of the Rules, inasmuch as the same is to be construed to find the intended purpose of the notice in the light of the entire contents as the notice was issued by the Commission being satisfied pursuant to section 26(1) and to be attributed harmoniously on interpretation.

The discussion/observation that has been made in paragraph No. 32 of the said reported decision is reproduced herein below:

The notice that has been issued was on the basis of satisfaction formed by the Commission in compliance with the provision of the ACC Act. In our view, in order to issue an order under section 26(1) of the ACC Act, there is no necessity to conduct "তদন্ত"

under Chapter 4 of the ACC Act and the Rules. But under Rule 17(5) upon scrutiny of the wealth statement submitted "তদন্ত" is to be conducted and completed pursuant to Chapter 4. Thus, for an order under section 26(1) it is not required to conduct an inquiry under Chapter 3 of the ACC Rules which relates to "অভিযোগ" submitted to the Commission under Rule 3 of the Rules. Moreover, the Commission was not required to disclose any specific material or investigation report for issuing an order asking for statement of assets and the satisfaction is that of the Commission and none else as has been held in the case of Mustafizur Rahman vs DG Anti-Corruption Commission, reported in 49 DLR 599. So, the objective satisfaction is not contemplated by the Act.

The discussion/observation that has been made in paragraph No. 33 of the above decision is reproduced herein below:

Upon proper construction of section 26 of the ACC Act or the Rule 17 of the ACC Rules a notice in Form 5 is contemplated for that the notice should be issued asking for a particular statement of assets under the signature of the Commissioner and, as such, the notice under rule 17 of the ACC Rules is not *ultra vires* to section 26 of the ACC Act.

The relevant part of paragraph No. 34 of the cited decision, further, has been observed/discussed which is reproduced herein below:

...
Accordingly, information sought for by the notice does not amount to providing evidence by the petitioner against herself contrary to the established principle of law to that effect. Accordingly, a request for submission of statement of assets not being a penal process but simply to gather information to ensure transparency and accountability and, by no stretch of the imagination, the submission of a wealth statement amounts to giving evidence against oneself nor also could be construed as giving evidence against oneself.

Paragraph No. 35 of the cited decision is reproduced herein below:

In the case of Md Nur Hossain vs Bangladesh reported in 27 DLR 545 Mr. DC Bhattacharya, J observed that "it may be mentioned that Mr. Justice BZ Kaikaus in delivering the leading judgment of the Bench, in that case has held in respect of the question of the validity of an order of requisition that if the person concerned had full knowledge of the contents of an order, service of the notice on him is not necessary." Though in the instant case, notice which was duly served, the notice as alleged though

may not conform to the wording "তদন্ত" and "সন্তুষ্ট" mentioned in section 26 of the Act and of the Rules as against the words "অনুসন্ধান" and "স্থির বিশ্বাস" as have been used in the notice, in our view the same has neither prejudiced the writ-petitioner nor has misled the writ-petitioner as pursuant to the said notice the writ-petitioner accordingly, submitted the wealth statement before the writ-respondent. The notice in all other material particulars was in conformity with the provision of said Act and Rules and no misgiving as to the provision of law or the petitioner as well was not in any way misled by such wordings used in the notice and, as such, merely use of the words "অনুসন্ধান" and "স্থির বিশ্বাস" in place of "তদন্ত" and "সন্তুষ্ট" in the notice designed to asking the writ-petitioner to submit the wealth statement does in no way suffer from any infirmity or any illegality and, as such, the notice, by no stretch of the imagination, could be termed as illegal or contrary to the provision of the Act and the Rules to that effect.

Paragraph No. 36 of the cited decision, further, it has been observed/discussed which is reproduced herein below:.

We have already held that the non-mentioning of the exact words "তদন্ত" and "সন্তুষ্ট" in the notice has not in any way misled the writ-petitioner or reason to be misled for holding the notice issued to be bad and invalid and the petitioner had no reason to be misled or prejudiced in any way as the petitioner perfectly understood the substance and contents of the notice in question and answered accordingly without any complaint regarding the said use of the words "অনুসন্ধান" and "স্থির বিশ্বাস" in place of the words "তদন্ত" and "সন্তুষ্ট" and the Court has always liberally construed the notice, mere inaccuracy in using the word of the Act and the Rules or even omission of the said word, which is not the case in the instant matter, will not invalidate the notice and the service thereof, as has been held in the decisions reported in 17 DLR 677, 19 DLR 905 and 27 DLR 545.

Paragraph No. 38 of the cited decision is reproduced herein below:

Article 35(4) of the Constitution of Bangladesh;

- (1)
- (2)
- (3)

4) No person accused of any offence shall be compelled to be a witness against himself.

- (5).....
- (6)

Above provision of our Constitution and Article 20(3) of the Indian Constitution use of the words "accused of an offence" will be attracted only if the proceedings start with an accusation and the person seeks protection is already an accused person when he is obliged to answer to the queries. In the case of MP Sharma vs Satish Chandra, AIR 1954 SC 300 while quoting on the similar position in Article 35(4) of the Constitution similar to Article 20(3) of the Indian Constitution providing no person accused of an offence shall be compelled to be a witness against himself, the Court observed that a person is accused of an offence only when a first information report is lodged with the Police Station or a complaint is made in the Court. Similarly, a person is compelled to production of incriminating documents by a person against whom a first information report under the Code of Criminal Procedure has been made in testimonial compulsion within the meaning of Article 20(3) of the Constitution.

Paragraph No. 42 of the cited decision, further, it has been observed/discussed which is reproduced herein below:

... the notice issued under section 26 of the ACC Act, 2004, and Rule 17 of the ACC Rules, 2007 do not offend the fundamental right of the writ-petitioner guaranteed under Article 35(4) of the Constitution.

On perusal, it appears that the issue raised in the present application/virus of section 26 of the Anti-Corruption Commission Act, 2004 was not challenged in the above cited decision. Indeed the alleged issue has been discussed and settled by our Apex Court in the case reported in 60 DLR (AD)-172, therefore, we do not find any reason and substance in the application for interference.

Accordingly, the application is rejected summarily without any order as to costs.

Communicate the order.