

Writ Petition No. 1167 of 2025

20.02.2025

Present:

Mr. Justice Md. Khairul Alam

and

Mr. Justice K.M. Emrul Kayesh

Mr. Md. Kamal Hossain, Advocate

..... In person

Mr. Md. Hafizur Rahman Khan, Advocate

.....For the respondent No.4

By filing this writ petition under Article 102 of the Constitution, the present petitioner Md. Kamal Hossain who is an Advocate of the Supreme Court of Bangladesh, in person, challenges the inaction of the Anti-Corruption Commission (shortly, the Commission) in taking necessary action against respondent Nos. 6-17, on the basis of the complaint filed by the petitioner, alleging the corruption of respondent Nos. 6-17 in procuring books of class I to X for the year 2025 in violating the provision as laid down in section 31(3) of the Public Procurement Act, 2006 (shortly, the Act, 2006). The petitioner also challenges the provision of section 31(3) of the Act, 2006 to declare the same as ultra virus to the Constitution and prays for a direction upon the Commission for initiating criminal

proceedings against respondent Nos. 6-17.

Relevant facts for the disposal of the said application are that the present petitioner is the father of two daughters. His elder daughter is a student of class X and the younger daughter is a student of class VI. Like other students in the country, they did not receive their textbooks in time this year as the National Curriculum and Textbook Board failed to supply the books to the students. As a public-spirited citizen, he inquired into the matter and found that respondent Nos. 6-17 had issued work orders for procuring the books in violation of the provision of section 31(3) of the Act, 2006, and through this illegality, they had embezzled a huge amount of public money. Various national dailies including, the Daily Ittefaq, The Daily Bhorer Kagaj and the Daily Kalbela published the news of the said corruption. The said newspapers have clearly and distinctly stated that there have been huge irregularities and corruption in the book procuring process. In the circumstances, the petitioner filed an application before the Commission on 05.01.2025

detailing the corruption of respondent Nos. 6-17 and to initiate a criminal proceeding against them. The Commission was obligated to take action against corruption, but the Commission did not take any action on the said application.

In this backdrop, the petitioner filed this application.

Mr. Kamal Hossin the learned Advocate appearing in person submits that from the application dated 05.01.2025, it is apparent that the respondent Nos. 6-17 committed the scheduled offence of the Anti-Corruption Commission Act, 2004 (the Act, 2004), therefore, the Commission was duty-bound to proceed with the investigation based on the complaint, but the Commission unreasonably decided not to proceed with the investigation, therefore, the inaction of the Commission is without lawful authority and is of no legal effect and the Commission is required to be directed to initiate proceeding against respondent Nos. 6-17. At the time of the hearing, Mr. Hossin does not press the middle part of his prayer i.e. he does not pray for declaring the provision of section 31(3) of the Act, 2006 ultra virus to the Constitution. Rather he submits

that the respondents were bound to follow the provision, but without following the same they embezzled a huge amount of public money.

Mr. Md. Hafizur Rahman Khan, the learned Advocate appearing for respondent Nos. 6-17 on the other hand, submits that since rule 13(3) of the Ant-Corruption Commission Rules, 2007 (shortly, the Rules, 2007) provides a specific remedy for the petitioner, hence this writ petition is not maintainable.

We have perused the application along with the documents annexed thereto.

It appears that section 17(c) of the Ain, 2004 authorized the Commission to hold an inquiry into any allegation of corruption on its own motion, or an application made by an aggrieved person or any person on his behalf.

The present petitioner as an aggrieved person made an application before the Commission alleging corruption of respondent Nos. 6-17. The learned Advocate for the petitioner contended that the Commission unreasonably decided not to proceed with the investigation based on that complaint, therefore, the Commission is required to be directed to initiate proceedings

against respondent Nos. 6-7. On the other hand, the learned Advocate appearing for respondent Nos. 6-17 contended that in case of an unreasonable decision of the Commission to proceed with an investigation based on any complaint, rule 13(3) of the Rules, 2007 provides a specific remedy for the aggrieved person, therefore, this writ petition is not maintainable.

Rule 13 of the Rules 2007 runs as follows:

“১৩। আদালতে অভিযোগনামা (Charge Sheet) দায়েরে কমিশনের অনুমোদন আবশ্যিক।
(১) আইনের তফসিলভুক্ত কোন অপরাধের অভিযোগ তদন্তের পর কোন ব্যক্তির বিরুদ্ধে প্রমাণিত হইলে, বিচার সুপারিশ করিয়া সিনিয়র স্পেশাল জজ আদালতে মামলা দায়ের করিবার ক্ষেত্রে কমিশন গ্রহণ আবশ্যিক হইবে।

(২) উপ-বিধি (১) এর অধীন কমিশন বা ক্ষেত্রমত, কমিশনার কর্তৃক প্রদত্ত অনুমোদনের প্রমাণ স্বরূপ অনুমোদনপত্রের একটি কপি আদালতে দাখিল করা না হইলে আদালত অপরাধ বিচারকার্য আমলে গ্রহণ করিবে না।

(৩) আইনের তফসিলভুক্ত কোন অপরাধ সংঘটনের বিষয়ে কোন অভিযোগ কোন ব্যক্তি কর্তৃক সরাসরি কোন আদালতে দায়ের করা যাইবে নাঃ

তবে শর্ত থাকে যে, যদি কোন সিনিয়র স্পেশাল জজ আদালত এই মর্মে সন্তুষ্ট হয় যে, আইনের তফসিলভুক্ত কোন অপরাধ সংঘটিত হইয়াছে বলিয়া বিশ্বাস করিবার মত যথেষ্ট কারণ রহিয়াছে এবং উক্ত অপরাধ সংঘটন বিষয়ে ইতিপূর্বে অভিযোগকারীর দাখিলকৃত অভিযোগের ভিত্তিতে কমিশন তদন্ত কার্যক্রমে অগ্রসর না হইবার সিদ্ধান্ত

যুক্তিযুক্ত ছিল না সেই ক্ষেত্রে উক্ত আদালত অভিযোগটি গ্রহণ করিয়া তদন্তের জন্য কমিশনকে নির্দেশসহ অভিযোগটি এবং অভিযোগের সমর্থনে দাখিলকৃত কাগজপত্র, যদি থাকে, কমিশনে বা, ক্ষেত্রমত, কমিশনের সংশ্লিষ্ট জেলা কার্যালয়ে প্রেরণ করিবে।”

On a plain reading of the said provision, it appears that if the learned Senior Special Judge is satisfied that there were sufficient grounds to believe that a scheduled offence had been committed and that the Commission's decision not to proceed with the investigation on the basis of the complaint filed by the complainant regarding the commission of such offence was not reasonable then, the learned Senior Special Judge shall accept the complaint and forwarded the complaint with all the documents to the Commission with a direction for investigation.

In the present case, the petitioner as an aggrieved person filed an application before the Commission alleging corruption of respondent Nos. 6-17. The petitioner alleged that the Commission unreasonably decided not to proceed with the investigation on the basis of the complaint. Therefore, as per the above provision of the law, the petitioner

is entitled to file an application before the Court of Senior Special Judge.

Since rule 13 of the Rules, 2007 provides specific provisions for the redressal of the grievance of the petitioner, i.e. against the Commission's condensable decision not of proceed with the investigation on the basis of the compliant of corruption therefore, we do not find any reason to entertain this application under Article 102 of the Constitution.

It may be put on record that whatever observations we have made, have been made for the disposal of this application only, and will have no bearing on the decision of the learned Senior Special Judge in disposing of any application, if any, of the petitioner.

In the above facts and circumstances, we do not find any merit in the writ petition.

Accordingly, the writ petition is rejected summarily, without any order as to cost.

Communicate this order to the respondents at once.