

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 4486 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:

Md. Rezaul Karim, Headmaster,
Kapasias Technical School (53095)
of Borotek Upazilla- Kapasia,
District- Gazipur.

..... Petitioner.

Vs.

The Secretary, Ministry of
Education Technical and
Madrasha Education Department,
Secretariate Link Road,
Poribohanpol Bhaban, Dhaka and
others.

.....Respondents.

Mr. Md. Zakir Hossain, Advocate with

Mr. Abdul Jalil, Advocate

.....for the petitioner

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Prahlad Debnath A.A.G

with Mr. Md. Hafizur Rahman A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondents No. 1.

Mr. Tanvir Ahmed, Advocate

.... for the respondent Nos. 2 and 5.

Mr. Muhammad Rafiul Islam, Advocate

... for the respondent No. 3

Heard on: 01.11.2022, 02.11.2022, 08.11.2022
and judgment on: 09.11.2022.

Kashefa Hussain, J:

Supplementary affidavit do form part of the main petition.

Rule nisi was issued calling upon the respondents to show cause as to why the Memo No. 57.17.0000.203.31.040.13-019 dated 23.02.2020 issued by respondent No. 2 under the signature of the respondent No. 4 (Annexure-G to the writ petition) cancelling the permission of teaching of Kapasia Technical School, Kapasia, Gazipur should not be declared to have been issued without lawful authority and is of no legal effect and why a direction for permission to continue the teaching and also allow other benefits of Kapasia Technical School, Kapasia, Gazipur and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Md. Rezaul Karim Zalal son of Md. Kafil Uddin, Headmaster, Kapasia Technical School(53095) of Borotek Upazilla-Kapasia, District-Gazipur is the citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Education Technical and Madrasha Education Department, Secretariat Link Road, Poribohanpol Bhaban, Dhaka, respondent No. 2 is the Chairman, Bangladesh Technical Education Board, 8/C Shere Bangla Nagor, Agargaon, Dhaka-1207, respondent No. 3 is the Director General, Karigori Shikhaka Adidoctor, F-4/B, Agargaon Proshasonic Area, Agargaon, Dhaka-1207, the respondent No. 4 is the Director (Curriculum), Karigori Shikhaka Adidoctor, F-4/B, Agargaon

Proshasonic Area, Agargaon, Dhaka-1207, respondent No. 5 is the Controller of Examination, Bangladesh Technical Education Board, 8/C Shere Bangla Nagor, Agargaon, Dhaka-1207, the respondent No. 6 is the Inspector (Curriculum) Bangladesh Technical Education Board, 8/C Shere Bangla Nagor, Agargaon, Dhaka-1207, the respondent No. 7 is the District Education Officer, Gazipur and the respondent No. 8 is the Upazilla Nirbahi Officer, Kapasia and president of Kapasia Technical School(53095) of Borotek Upazilla-Kapasia, District-Gazipur.

The petitioner's case inter alia is that the Director (Curriculum), Karigori Shikhaka Adidoptor, F-4/B, Agargaon Proshasonic Area, Agargaon, Dhaka-1207 granted a temporary permission for teaching the Kapasia Technical School, Kapasia, Gazipur vide Memo No. বাকশিবো/ক(ভাকঃ) ২০১২/৪৯৬৫ dated 14.01.2013 for following some conditions, since then the school was running their teaching activities. That the inspector of Bangladesh Technical Education Board, Shere Bangla Nagar, Agargaon, Dhaka gave a declaration as "Academy Shikrity" vide Memo No. ৫৭.১৭.০০০০.৪০৩.৩১.২৫৪৪.১৮ তারিখঃ ১৪.১১.২০১৮ with the approval of the chairman of the Bangladesh Technical Education Board, Dhaka for three years following some conditions and the petitioner has deposited affiliation fees to the Bank. That the Inspector of Bangladesh Technical Education Board, Dhaka approved the Managing

Committee of Kapasia Technical School, Borotek, Upazilla-Kapasia, Gazipur vide Memo No. ৫৭.১৭.০০০০.৪০৩.০৫.০৯৫-১৮.৫০/১৬৫ তারিখ- ২৬.০২.২০১৯ for a period of next 2(two) years. That the Deputy Secretary (M.P.O) Ministry of Education Technical and Madrasha Education Department, M.P.O cell, Poribahan Pol Bhavan, Dhaka has given approval and direction for M.P.O of the said school as Serial No. 96 of the M.P.O. list vide Memo No. ৫৭.০০.০০০০.০৪০.০৫.০২.১০০.২০-৬৩ তারিখ-২৯.০৪.২০২০. That the Headmaster of Kapasia Technical School, Gazipur submitted an application for permission for registration of name of 5(five) students in the year 2017 to the chairman, the Chairman of the Board, sent the matter of the Director (curriculum) for taking steps. The Director sent the matter to the registration officer for taking steps. Thereafter, the Registration officer sent the matter to section officer for taking steps, subsequently the registration card as usual was sent to the office of the applicant. So the petitioner did not commit any offence for replacement registration of the students. That an enquiry was held against the allegation of replacement of registration of the 5(five) students and the name of the system analysts engineer of the technical Board, Dhaka was connected with the allegation. In the daily Jugantor a report was published on 29.02.2020, 1st page that four system analysts of the Board was implicated in the corruption allegation. That by the approval of the chairman, Bangladesh Technical Education

Board, Agaragon, Dhaka the director (curriculum) of the Technical Board, Dhaka cancelled the permission of teaching of the Kapasia Technical School-53095, Kapasia, Gazipur raising some false allegations against Kapasia Technical School. That after cancelling the permission of teaching of the school, the Headmaster of the Kapasia Technical School, Kapasia, Gazipur submitted an application on 15.05.2020 to the chairman of Bangladesh Technical Education Board, Dhaka respondent No. 2 to withdraw the order of cancellation of permission of teaching, otherwise the teachers students, school will fall in danger and loss. But till today the chairman of the board did not dispose the application dated 15.05.2020 or even reply nor has taken any steps pursuant to the application. That the controller of Examination of Bangladesh Technical Education Board, Dhaka issued a letter vide Memo No. ৫৭.১৭.০০০০.৩০৩.৯৯.৩৩০.১৬.১৪৭ dated 14.05.2020 for transferring the students to another school nearby. That the Director (PIW) of Technical Education Adidaptor, Dhaka issued letter vide Memo No. ৫৭.০৩.০০০০.০২৮.১৮.০১১.১৮-৪৮৩ dated 22.06.2020 did not consider the M.P.O due to the cause of cancelation of the permission of teaching in the school. So, the future of the students teachers are uncertain. That the Director (cumriculum) of Bangladesh Technical Education Board, Agargaon, Dhaka has given permission for temporary teaching of the Kapasia Technical school on 14.01.2013 vide Memo No. বাকাশিবো/ক-ভোক:/২০১২/৪৯৬৫ since then the school was

performing all activities following the Rules and principles of the Bangladesh Technical Board, Dhaka and the inspector of the Board has given approval as Academy Shikkrity to some for next 3(three) years on 14.11.2018 and the headmaster of the Kapasia Technical School deposited the affiliation fees as per rules of the Board. A Managing Committee was approved by the Board for management of the school on 26.02.2019. Thereafter on 29.04.2020, the Deputy Secretary, Ministry of Education (Technical and Madrasha Department) M.P.O cell approved the said school's Teachers and Staffs salary in Monthly Pay Order (M.P.O) So the respondent No. 5 cancelled the permission for teaching without proper allegation.

Regarding those who were connected with this allegation, it was published in daily Jugantor news paper on 29.02.2020. So the school authority was not connected with the allegation, as such the impugned order is illegal, unjust without unlawful authority and has no any legal effect. That allegation was brought against the Kapasia Technical School regarding replacement of the roll and registration numbers without changing the name and others information. For the purpose of enquiry on the aforesaid allegation, a enquiry committee has given a report and also requested to cancel the permission of teaching, without following the rules of Non Government Technical Schools Nitimala and principles of equity and legal justice. The allegation brought against the Kapasia Technical School is not

specific and it is not possible only for a school to have done such activities. In the daily news paper daily Jugantor 1st page published the news on 29.02.2020 as to who were implicated with the corruption and most of them are officers of the respondents office. So the enquiry report was prepared without proper information with purpose of destroying the academic establishment also of National Vocational Education. So the impugned order is illegal and without unlawful authority and have no any legal effect. Hence the writ petition.

Learned Advocate Mr. Md. Zakir Hossain along with Md. Abdul Jalil, learned Advocate appeared for the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Mr. Prahlad Debnath A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent No. 1. Learned Advocate Mr. Tanvir Ahmed appeared for the respondent Nos. 2 and 5 and learned Advocate Mr. Muhammad Rafiul Islam appeared for the respondent No. 3.

Learned Advocate for the petitioner submits that the cancelation of permission of teaching of Kapasia Technical School, Kapasia, Gazipur under the signature of the respondent No. 4 which was issued by the respondent No. 2 is without lawful authority and is of no legal effect. He submits that the petitioner school of which is the headmaster is not involved in the fraudulent activities of replacement of students by way of changing the name and details of the student registration. He argues that although the respondents brought

allegation against the petitioner, but however the respondents could not prove by any materials documents that the petitioner is involved in the fraudulent activities. He submits that if ever any fraudulent activities have occurred it is due to collusive activities of other persons including officials in the respondent's office.

Upon a query from this bench regarding the admission of the petitioner which is annexure X4 of the affidavit in opposition, the learned Advocate for the petitioner by way of supplementary affidavit argues that the admission whatsoever given by the petitioner of (Annexure X4 of the affidavit in opposition) was given under duress and coercion and not voluntary. He takes us to the supplementary affidavit. In support of his contentions he takes us to Annexure-K of the supplementary affidavit dated 4.8.2021 which is the subsequent withdrawal of the earlier admission by the petitioner. He next submits that although it is a principle of natural justice under the mandate of our constitution that before seizing a person of his right he ought to be given opportunity to be heard but however the petitioner's school before cancelling the academic permission was not afforded due process by way of show cause notice etc. He contends that in absence of show cause notice it is a violation of the fundamental rights of the petitioner and therefore such cancellation is unlawful in absence of due process. Next the petitioner takes us to page 23 of the affidavit in opposition filed by the respondent Nos. 2 and 5 which is annexure X-

1. He draws us to annexure X-1 of the affidavit in opposition which is an enquiry report conducted by the respondents. The learned Advocate for the petitioner agitated that although the respondents implied that the petitioner school was involved in fraudulent collusion, but however the enquiry report does not give any indication as to where and how they discovered the alleged collusion. He submits that in the absence of details as to how the petitioner was involved and at what stage they were involved in the collusion such allegation has no factual basis and such enquiry report is not acceptable. He concludes his submission upon assertion that the unlawful cancellation of the academic permission of the school is not sustainable and is violative of the fundamental rights of the petitioner and the Rule bears merit ought to be made absolute for ends of justice.

On the other hand the learned Advocate for the respondent Nos. 2 and 5 by way of affidavit in opposition vehemently opposes the Rule. On the issue of show cause, he submits that although in this matter even if show cause is a formal notice was not issued but it is evident from the enquiry report and other documents that the petitioner was summoned by the respondents and admittedly he was present during the hearing. He submits that the petitioner's admission which later he denied is also evident that he was called for to be heard. He takes us to Annexure-X-1 which is the enquiry report and submits that Annexure-X-1 directly manifest that the petitioner's

school was involved in the fraudulent registration. There was a query from this bench regarding the allegation of collusive activities and the conduct of some officials in the respondent's office. Responding to our query the learned Advocate for the respondent takes us to annexure-X-10. He points out that the document (Annexure-X-10) clearly manifest that active steps were already taken by the respondents against some officials who were allegedly involved in the collusion. He submits that such steps taken against some officials clearly manifest that the respondents are transparent in their conduct in good faith to address the fraudulent activities that have taken place. Against the petitioner's contention that no formal show cause notice was issued, he argues that mere technical flaws cannot defeat the substantive subject matter if it is found that an offence has been committed. He continues that the incident of replacement of students name is unprecedented as being one of its kind, unprecedented and unique in its kind, given that previously there is no such precedent or history of an offence of this kind in the educational sector. He submits that therefore the respondents to address the issue even if they made some technical flaws nevertheless there is substantive proof of the allegations particularly through the admission of the petitioner which is annexure X-4 of the affidavit in opposition. He submits that from Annexure X-4 of the affidavit in opposition it is clear that the petitioner was involved in the collusion. There was another query

from this bench regarding Annexure-K which is the supplementary affidavit filed by the petitioner which is a statement of withdrawal of his earlier admission dated 08.04.2021. On this issue, the learned Advocate for the respondent draws our attention to the Rule issuing date by this Division that is on 09.02.2021. He now takes us to the supplementary affidavit to the statement of withdrawal of admission which is annexure-K wherefrom he shows that the date of withdrawal of admission dated is 08.04.2021. He submits that the statement of withdrawal of the earlier admission during a pending Rule clearly enough manifest that the petitioner only attempting to evade his fate created a false statement upon withdrawal of his earlier statement. Regarding the petitioner's claim of coercion and duress, he submits that such submissions are not acceptable in writ jurisdiction since coercion and admission under duress are more applicable to a case arising out of a criminal matter. He submits that the তদন্ত প্রতিবেদন annexure-X-1 read with annexure X-4 which is the admission of the petitioner is clear enough to manifest that the petitioner was heard and was given a chance to be heard and only after hearing the petitioner particularly by way of his admission the decision was taken. He continues that moreover it appears that the respondent's conduct subsequent to discovery of the offence have been more or less diligent and have taken steps against those including officials who are allegedly involved in the collusion. He reiterates that this incident of

replacement of student's names is one of its kind and unprecedented and such collusion must be dealt with strictly. He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

Learned Advocate Mr. Muhammad Rafiul Islam on behalf of the respondent No. 3 by way of filing affidavit-in-opposition substantively supports the submission of the respondent Nos. 2 and 5 and concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned counsels, perused the application and materials on records before us. It is not denied by the petitioner also that replacement of name of students by way of fraudulent activities has taken place. The petitioner contended that he was not involved with the registration replacement along with others.

Our duty here is to address the issue as to whether the petitioner was involved in the fraudulent act. While examining and scrutinizing the documents we have particularly examined annexure-X-1 of the affidavit in opposition. Annexure X-1 is the enquiry report. Upon examination it shows that annexure-X-4 reflect the admission of the petitioner being involved in the collusion. By way of Annexure-X-1 and X-4 it is clear that even if no formal show cause was issued in this matter but nevertheless the petitioner was substantively given an opportunity of being heard. The petitioner could not deny his presence

as per the enquiry report, neither could he deny Annexure-X-4. We are in agreement with the respondents that even if no formal show cause notice was issued, but mere technical flaws may be overlooked since he was substantively afforded due process and it is manifest in the documents and not denied by the petitioner.

The petitioner by way of supplementary affidavit in annexure-K contended that the statement taken earlier from him which is reflected in his admission by way of Annexure- X-4 affidavit in opposition was taken under duress and coercion /and not voluntary. It may be pertinent to remind the learned Advocate for the petitioner, that this Bench is sitting in writ jurisdiction and not criminal jurisdiction. The argument of an admission being taken “under coercion and duress” may have been applicable in a case under criminal jurisdiction. Such arguments of the learned Advocate for the petitioner are not acceptable in writ jurisdiction under article 102 of the Constitution. Sitting in writ jurisdiction or duty is to as to primarily examine whether due process have been afforded to the petitioner. It is not our duty here to enter into the factual details.

As mentioned above it is clear that the petitioner in this case was given opportunity of being heard even if no formal show cause notice was issued. We have examined the documents. It is evident that Rule was issued in the instant writ petition on 09.02.2021. The earlier admission by way of annexure-X-4 in the affidavit in opposition was

made by the petitioner on 12.01.2020. It is strange that the petitioner made the subsequent statement of withdrawal of his earlier statement as being under coercion during a pending Rule that is on 8.11.2021. Therefore we are of the considered view that the petitioner evidently did not come with clean hands. There is absolute lack of transparency in the petitioner's conduct.

Under the facts and circumstances and from the foregoing discussions made above we do not find any merits in this Rule.

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

The order of stay granted earlier by this court is hereby vacated.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J:

Arif(B.O)