

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

Writ Petition No. 5005 of 2022
With
Writ Petition No. 5896 of 2022
And
Writ Petition No. 5897 of 2022

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. Gaffar Elahi
...Petitioner (in Writ Petition No. 5005 of 2022),

Sultana Dil Afroza
...Petitioner (in Writ Petition No. 5896 of 2022),

TCL Optoelectronics Limited
...Petitioner (in Writ Petition No. 5897 of 2022),

Versus

The Mayor, Dhaka South City Corporation,
Nagar Bhaban, Dhaka-1000 and others
...Respondents (in all writ petitions)

Mr. Ajmalul Hossain Kc, Senior Advocate with
Mr. Muhammad Saifullah Mamun, Advocate
...For the Petitioner (in all writ petitions)

Mr. Mejbahur Rahman, Advocate with
Ms. Samia Afroz Khan, Advocate
...For the respondent No. 1 (in all writ petitions)

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S.M. Maniruzzaman

Judgment on 28.08.2024.

Md. Iqbal Kabir, J:

The question of law and the facts involved in the aforesaid three writ petitions are identical and the Rule Nisi has been issued in similar terms, so the above three writ petitions are taken together for hearing and disposed of by a single judgment.

In the Writ Petition No. 5005 of 2022, at the instance of the petitioner, this Court issued Rule on 25-04-2022, and was in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Memo No. 46. 207. 000. 10. 04. 822. 2022 dated 24.03.2022 issued by respondent No. 4 (Annexure-L) demanding from the petitioner take 23,69,67,431 (Twenty-Three Crore Sixty Nine Lack Sixty Seven Thousand Four Hundred Thirty-One) as the outstanding amount payable to respondent No. 1 and taka 3,55,45,115/- (Three Crore Fifty Five Lack Forty Five Thousand One Hundred Fifteen) as VAT payable to the National Board of Revenue in connection with the installation of Digital LED Display pursuant to the allotment letter issued by the respondent No. 3 vide Memo No. 46. 207. 000. 10. 04. 011. 2017 dated 14.11.2007 (Annexure-B-1) should not be declared as illegal and has been issued and done without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The case of the petitioner, as set out in the writ petition No. 5005 of 2022, in short, is as follows:

Respondent No. 3 by a letter dated 14-11-2017 allotted to install 500 number of Digital LED Display to the petitioner pursuant to the letter of interest expressed by the petitioner. The allotment letter states rent would be taka 800/ per square feet per year. Accepting such rent petitioner initially installed 250 Digital LED Display Board. The petitioner made payment with regards to the installation of a Digital LED Display and informed installation of 50 LED Digital Display is under process. Respondent No. 2 by its Memo dated 24.03.2020 acknowledges the above-mentioned payments and demands further payment of rent and VAT against all 500 (Five hundred) Digital LEDs. However, the petitioner vides its letter dated 26.06.2020 informing the reasons for non-installation of the total number of allotted Digital LED Display in which the petitioner did not have any fault of his own. However, in two separate letters dated 29.06.2020 petitioner informed that they would discontinue 200 (Two Hundred) Digital LED Displays, and another one stated that they would continue with 300 (Three Hundred) Digital LED Displays. Thereafter, respondent No. 4 by the Memo dated 13.08.2020 demanded the rent and VAT calculating the same amount, the said respondent assessed the rent

as Tk. 20,000/- (Tk. Twenty Thousand) per square feet by violating the terms and conditions of the Allotment Letter.

The petitioner took time to reply to the memo dated 13.08.2020 and made some payments as referred to the letters for which the 200(Two Hundred) Digital LED Display could not be installed. However, by a letter dated 16.09.2020 petitioner ended the relationship with the DSCC. Respondent No.4, instead of such fact, after one and half years by the impugned memo dated 24.03.2022 demanded Tk. 3,55,45,115/-. Knowing the fact petitioner requested the respondents to withdraw the impugned memo and exonerated him from the claim considering the final payment that has already been made. Having no response, the petitioner through learned Counsel on 12.04.2021 issued a Notice Demanding Justice praying for withdrawal of the impugned memo and exoneration from the alleged claim. However, respondents did not pay any hit to it.

It is at this stage being aggrieved by and dissatisfied with the aforesaid non-response of the respondent, that this petitioner moved the above-noted petition to this Court and obtained Rule Nisi.

It is pertinent to note that based on the same facts and documents above three writ petitions have been filed, and in similar terms, the Rule Nisi was been issued. The impugned memo, date, amount, and quantity of the Digital LED Display Board are different in the other two writ petitions. At this juncture, brief facts of those two other petitions are brought herein below.

The case of the Petitioner, as set out in writ petition No. 5869 of 2022, in short, is that Respondent No. 3 allotted to install 71 Digital LED Display to the petitioner and petitioner initially installed 22 Digital LED Display Boards out of 71. However, later on, the petitioner informed that he would continue only with 10 LED screens out of 22 installed Digital LED Display Boards. Against which the petitioner also made some payment. However, on 08-09-20 made the final payment, after making the final payment petitioner issued a letter dated 16-09-22 thereby ending the relationship with the DSCC so far as it relates to the installation of the Digital LED Display. But, Respondent No. 2 issued a demand notice thereby demanding payment of rent and 15% VAT against all 71 Digital LEDs. as outstanding payment payable to Respondent No. 1 and the National Board of Revenue from the petitioner.

The case of the Petitioner, as set out in writ petition No. 5898 of 2022, in short, is that Respondent No. 3 allotted to install 469 LED

Display Board. Though, the petitioner could not install all the Digital LED Display Boards for many reasons including the non-issuance of the Environmental Clearance Certificate. However, by a letter, it has informed that the petitioner would make payment of rent against the installed Digital LED Display from the date of installation and make some payments. The petitioner by a letter informed about the discontinuation of 64 installed LED and also informed it would continue with 400 installed LED Screen. However, in a letter dated 15.09.2020 petitioner informed that he ended the business relationship with the DSCC related to the installed Digital LED Display Boards. However, after elapse of some time, respondent No. 4 by issuing memo dated 24.03.2022 demanded rents and VAT as outstanding payments payable to respondent No. 1 and to the National Board of Revenue.

It is at this juncture, bringing the above facts petitioner moved the petitions to this Court and obtained the Rule in similar terms as aforesaid.

Mr. Ajmalul Hossain Kc, the learned Senior Advocate with Mr. Muhammad Saifullah Mamun the learned Advocate appearing on behalf of the petitioners in all these petitions, while the same is opposed by Mr. Mejbahur Rahman the learned Advocate appearing along with Ms. Samia Afroz Khan, the learned Advocate for the respondent City Corporation.

Mr. Hossain upon placing the petitions taking us to the impugned decision along with the allotment letter submits that respondents fixed the rent of Tk. 800 per SQF, but surprisingly referring to the Kor Tofshil demanding the rents of Tk. 20,000/ by the impugned memo dated 24-03-2022 is unreasonable, unjust, and illegal. According to him, the schedule of the Kor Tafshil rent for “the LED sign has been fixed SQF @ Tk 20,000/, He claims Kor Tofshil mentioned the rent for “LED Sign” would be Tk. 20,000/ but the respondents demanded the same amount for Digital LED Display which are rather different from each other, therefore, the demand of the respondents is liable to be declared illegal and has been issued without lawful basis.

He submits imposition of tax by the impugned memo without prior notice is violative of the fundamental rights as such the same is wholly without jurisdiction and lawful authority. According to him such increased tax for the Digital LED Display obstructed the rights to enjoy the property and Business.

Respondent by filing an affidavit-in-opposition denied the material assertion made in the application and contested the Rules.

Mr. Mejbahur Rahman, the learned Advocate for the respondent No. 1 submits that the application is not maintainable in law as there is an alternative and equally efficacious remedy available in law. The petitioner, by way of this writ petition, is seeking to evade payment of tax and thereby trying to deprive the respondents of their due revenue.

Respondent claims that the petitioner of the respective writ petition obtained approval from DSCC to install Digital LED Displays for 60 months and undertook that he would pay the rent as and when DSCC demands such tax prescribed under law. Clause (gha) of the Allotment letter dated 14.11.2017, states that the fee/tax per SQF would be Tk. 800 and in addition clause (umo) of the said allotment letter clearly states that the petitioner will pay the fee/Tax or due as the Government prescribes under the law. Respondent submits per SQF tax for Digital LED Display has been fixed @ Tk. 800 violating the Tax Schedule-2015, though the rate for Digital LED Display was mentioned in the Tax Schedule even before the Allotment letter was issued. Thus, based on the Audit Report, the Respondent lawfully and legally demanded tax by issuing a memo as outstanding payable to the Respondent No. 1 and VAT Authority in connection with the installation of the Digital LED Display.

Mr. Hossain in reply, argued that under the allotment letter rate of the rents can be fixed by the govt, and in such cases, the rents have to be adjusted in support of the demand, respondents referred to City Corporation Adorsho Kor Tafshil, 2015. He claims the respondent willfully avoided disclosing the existence of Adorsho Kor Tafshil before issuing the allotment letter. Petitioner was never informed about the rents of Tk. 20,000/ and if the same was so communicated to the petitioners earlier, the petitioners would never apply for allotment in the first place.

Mr. Hossain claims Tax for the installation of the Digital Screen has not been included, considering such, DSCC sent the proposal to the Local Government vide letter dated 30.31.2019 proposing the rate fixed by the Committee for Digital Screen Projection/ Digital Curtain/LED Display, etc to be included under Schedule 2016, but has not yet received a reply. Therefore, for the greater interest of DSCC, they allowed as per proposed fees and fees have been paid.

Mr. Hossain argued that certain criteria have to be fulfilled under the law before the fixation of tax and for making the same applicable to the people for the enactment of Kor Tafshil. According to him without fulfilling such prerequisites requirement of law, no tax can be assessed.

According to him Adarsha Kar Tafshil itself is not applicable as the same has not been assigned by the Act according to the admission of the respondent. Moreover, there is no regulation for the installation of LED screens.

Respondent denied alleged submissions, however, it has claimed that following due process of law Adarsho Kor Tafshil has been enacted. According to him, officials of the City Corporation in connivance with the vested quarters made such an application to the Ministry only to bypass the Adarsho Kor Tafshil 2015. It has claimed in the presence of such Rules execution of such contract is illegal as officials of the Respondent cannot execute such contract in presence of such law. He also informs that non-response by the Ministry relates to the letter sent by the City Corporation tantamount it has rejected. He also brought notice that other firms involved with the business giving and City Corporation collecting Tax as prescribed under the Adarsho Kor Tafshil 2015, thus, the claims of the petitioners become redundant.

It is at this juncture argued that the rent fixed for LED Display has been claimed as Tax, and fall in financial loss in the Advertisement area to which DSCC is entitled. Petitioner companies did not pay such tax as prescribed under the Tax Schedule. DSCC has the legal obligation to collect such tax from the Petitioners as those are public money and they have an obligation to pay the alleged Tax under the law and clause (P) of the Allotment Letter. Knowing such following Local Government (City Corporation) Act, 2009 (in short the Act), the City Corporations (Taxation) Rules, 1986 (in short Rules) and Adarsho Kor Tapshil, DSCC issued Memo dated 24.03.2022 (Annexure-L), (Annexure-I) and Memo (Annexure-M) upon the petitioners thereby demanding outstanding dues in connection with the installation of Digital LEDs Display.

The respondent claimed that the petitioners filed the instant petitions in complete defiance of existing law and rule, indeed the context of the law is something different from the argument made by the petitioners. Alleged instant problems can be solved under the city corporation law and Rules.

Mr. Hossain denied such and submitted that the writ petition is maintainable in its present form and manner and the provisions of the Review or Appellate forum as referred by respondent No. 1 do not apply to the petitioners' case and the facts of the petitioners are completely

different from the facts of the cases referred by the respondent and not applicable to the petitioner's case.

We have considered the submissions made by the contending parties, pursued the petition, affidavit-in-opposition, and other materials on record brought before this Court, and considered the facts and circumstances of the case.

It transpired that the allotment letter allowed the Respondent to demand tax as per the Tax Schedule. The demand amount is not increased amount as it was fixed long before by the Ardorsho Kar Tafsil-2015. The allotment letter clearly states when it can be claimed. Indeed proposals related to Tax are not accepted by the authority. Moreover, by the demand of the respondent, it is clear that there is no scope to accept the proposal, therefore, petitioners are duty-bound to pay, and the law does not require served notice upon the petitioners.

It is at this juncture, that it has to settle whether the Adarsha Kar Tafsheel 2015 is at all applicable to the petitioners' case and or the same is different than the dispute referred to in section 88 of the Act.

In this context, it is pertinent to state that section 84 of the Local Government (City Corporation) Act, 2009 deals with the issue. For our better understanding section 84 of the Local Government (City Corporation) Act, 2009 is reproduced herein below:

Section 84 of the Act provides that:

“৮৪। আদর্শ কর তফসিল। -সরকার, আদর্শ কর তফসিল প্রণয়ন করিব এবং সিটি কর্পোরশন, কর, উপ-কর, রেইট, টোল বা ফিস আরাপার ক্ষেত্র উক্তরূপ প্রণীত আদর্শ কর তফসিল নমুনা হিসাব অনুসরণ করিবা।”

It is pertinent to note that following the Rules mentioned under serial no. 10(4)(298)(1)(gha) of the Tax Schedule rate has been fixed for LED signs per square feet per year. DSCC demanded such an amount as per the allotment letter for the installation of LED Displays.

Relating to tax disputes, if any, there is an opportunity in section 88 of the Act, which states if anyone has a dispute regarding any tax, rate, fee, etc, he has the option to submit an objection following the prescribed procedure mentioned in the law:

“৮৮। কর নিরূপণের বিরুদ্ধ আপত্তি।-এই আইনের অধীন ধার্য কোন কর, উপ-কর, রেইট, টোল বা ফিস বা এতদসংক্রান্ত কোন সম্পত্তির মূল্যায়ন অথবা কোন ব্যক্তি কর্তৃক উহা প্রদানের দায়িত্ব সম্পর্ক কোন আপত্তি নির্ধারিত কর্তৃপক্ষের নিকট এবং নির্ধারিত পদ্ধতিতে উত্থাপন করিত হইবা।”

In the presence of the above-noted procedure prescribed under the law, the Petitioners have to avail appellate forum and those laws are applicable for them which is also an equally efficacious remedy.

As per Rule 7(1) of the Rules 1986:

"Any person who has been assessed to a tax (emphasis added), rate, cess, toll or fee under the Ordinance may object to the valuation or assessment therefore, or his liability to be so taxed, by a petition 6 in form P) presented to the City Corporation within thirty days from the date of receipt of notice of such assessment."

Further, Rule 7(8) provides that:

"The decision of the majority of the members present shall be the decision of the Assessment Review Board Concerned and shall be final and the decision of the Board shall be communicated to the applicant by the City Corporation."

Even after filing a petition under Rule 7 (1) against the assessment of tax and after the decision of the Review Board, another Appellate forum is available under Rule 7 (13) of the Rules, 1986 which provides as follows:

"Any person aggrieved by an order made under sub-rule (8) may within sixty days from the date of receipt of the order, prefer an appeal to the Divisional Commissioner within whose jurisdiction the Municipal Corporation is situated by depositing 75% percent of the tax as decided by the Assessment Review Board with the Municipal Corporation; and the decision of the Divisional Commissioner on such appeal shall be final."

The above law and rules have given a forum to agitate grievances, despite such forum according to the above-noted Rules and having alternative remedy, unjustly filed the instant Writ Petitions.

Mr. Rahman in support of his contention relied on a decision passed in Civil Petition for Leave to Appeal No. 2344 of 2018, wherein the Appellate Division of the Supreme Court of Bangladesh observed that:

"The present petitioner in this leave petition raised the question of maintainability of the writ petitioner as the writ petitioner did not prefer any appeal, as required under rule 7(13) of the Municipal Corporation (Taxation) Rules 1986, to the Divisional Commissioner against the re-assessment order made by the Review Board. Admittedly the writ petitioner did not file any such appeal as provided in the

aforesaid Rules rather it filed the above-noted writ petition challenging the re-assessment as well as the final demand."

...

"From a reading of rule 7(13) it appears that any person aggrieved by an order made under Rule 7(8) shall have to file an appeal to the Divisional Commissioner upon depositing 75% of the tax as decided by the Review Board who shall dispose of the same and give decision within 120 working days from the date of filing of the appeal and the decision of the Divisional Commissioner shall be final. This statutory remedy is not only an alternative remedy but also efficacious as a time limit has been fixed for disposal of the appeal."

The Hon'ble Appellate Division further went on to state stated that:

"... considering the above position, as revealed, it appears that the writ petitioner did not avail the opportunity of moving the Divisional Commissioner in Review under rule 7(13) upon depositing 75% of the demanded amount. Which is of course an alternative efficacious remedy available..."

"Accordingly, we hold that the High Court Division erred in law in making the Rule Nisi absolute and giving directions. Thus we find merit in this civil petition and, as such, the judgment and order complained of herein is liable to be set aside".

Knowing the above position along with the law, it appears that the petitioner's rights are protected under the above-mentioned law. The instant writ petitions are not maintainable in law. The claim of Tax by the respondent is not unjust, and nothing is violated under the law. At the time of obtaining approval from DSCC to install Digital LED Displays, the petitioners undertook that they would pay the rent/tax as and when DSCC demands such tax under the law. Respondent demanded such tax following existing law which has been made under the Local Government (City Corporation) Act 2009. However, at the time of executing the contract, there were Rules called Adarsha Kar Tafshil, 2015, respondent claims tax as it falls under the alleged Law. Therefore, the arguments made by the petitioners are not tenable in law.

Indeed, under the law and Rules there is a forum to agitate their grievances, and petitioners of the above-noted writ petitions without availing such opportunity as prescribed in law having alternative remedy,

unjustly filed the above-noted petitions to agitate their grievances. In such a situation it has reminded us that the principle enunciated in the case of Kartic Das Gupta vs. Election Commission of Bangladesh and others, (8 ADC 578, pg 582) has to be followed in the present case. Therefore, this Court did not enter this case into the merits as the instant Writ Petitions are not maintainable.

Accordingly, the Rule Nisi issued in the above three writ petitions is discharged.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

There will be no order as to cost.

Communicate the order.

S.M. Maniruzzaman, J:
I agree