

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

WRIT PETITION NO.7890 OF 2020.

Kawsar Ahmad and another

.....Petitioners.

-Versus-

The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Housing and Public Works, Bangladesh Secretariat, Ramna, Dhaka-1000 and others.

----- Respondents

Mr Yousuf Hossain Humayun, Senior Advocate with

Mr. Md. Motiur Rahaman, Advocate

..... For the Petitioners.

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

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

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

..... For Respondents.

Mr. Md. Khurshid Alam Khan, Senior Advocate,

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

Present:

Mr. Justice Md. Nazrul Islam Talukder
And

Mr. Justice Khizir Hayat

Heard on: 07.08.2022 and 16.08.2022

judgment on:16.08.2022.

Md. Nazrul Islam Talukder, J:

On an Application under Article 102 of the Constitution of the People's Republic of Bangladesh, this Rule, at the instance of the petitioners, was issued calling upon the respondents to show cause as to why the impugned letter contained in Memo being

No.00.01.0000.501.01.035. 19-20460/1(5) dated 27.09.2020 (**Annexure-B**) issued by the Respondent No.03, to the Respondent No.01 for taking departmental action against the petitioners and as to why impugned letter contained in Memo No.25.00.0000.019.01.10.2010-336 dated 21.10.2020 (**Annexure-C**) issued by the Respondent No.02 to Respondent No.04 with a view to informing him of taking departmental action against the petitioners and others, should not be declared to have been passed without lawful authority and are of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule, this court, by an order dated 10.11.2020, stayed the operation of the impugned letter contained in Memo being No.00.01.0000.501.01.035. 19-20460/1(5) dated 27.09.2020 (**Annexure-B**) and the impugned letter contained in Memo No.25.00.0000.019.01 .10.2010-336

dated 21.10.2020 (**Annexure-C**) for a period of 6(six) months from date.

The facts leading up to issuance of the Rule are as follows:

It is stated in the writ petition that the petitioner No.01 namely Kawser Ahmad was appointed as Chief Building Inspector pursuant to an appointment letter dated 19.10.2015 and he joined in the post on 26.10.2015. The petitioner No.2 namely Md. Mostafizur Rahman was appointed in pursuance of the letter dated 19.10.2015 and he joined in the post on 29.10.2015; an accident was taken place at F.R Tower (commercial building) situated at 32, Kamal Ataturk Avenue, Banani, Dhaka and as a result of incident of fire, 25 persons were found dead and 73 persons were found seriously crippled whereupon a case has been initiated by the ACC vide Case No.03 dated 25.06.2019 under sections 420, 467, 468, 471, 411, 166, 109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947

against the 20 F.I.R named accused due to violation of Rule 32 of the Building Construction Rules, 1996 for constructing the F.R. Tower by creating forged design by showing approval of 23rd floor instead of 19th floor; the Respondent No.03 on behalf of the Anti-Corruption Commission by the impugned letter contained in Memo No.00. 01. 0000. 501. 01. 035. 19-20460/1(5) dated 27.09.2020 requested the Respondent No.01 for taking departmental action against the petitioners and others according to Rajdhani Unnayan Kartipakkha Officers/Employees Rules, 2013 stating, inter alia, that due to fire on 28.03.2019 at F.R. Tower and because of the negligence of the petitioners and others, massive damage occurred therein and on account of extreme negligence of the petitioners and others after illegal construction of building, the ACC has taken decision to take departmental action against them. Moreover, the Respondent No.03 sent a set of allegation and statement of allegation with the said impugned letter; on receipt of

the memo dated 27.09.2020, the Respondent No.02 communicated the impugned letter contained in Memo No.25.00.0000.019.01.10.2010-336 dated 21.10.2020 to the Respondent No.04 with a request to inform him about the matter after taking departmental action against the petitioners and others; the petitioner No.01 namely Kawser Ahmad was appointed as Chief Building Inspector pursuant to an appointment letter dated 19.10.2015 and he joined in the post on 26.10.2015. Thereafter he was posted on 06.12.2015 at Zone-4, RAJUK and subsequently he was given charge to Sub-Zone 4/2. On 09.10.2017; the duty of the petitioner and another namely Md. Abu Hanif Sarker was re-distributed in which the petitioner No.01 was given charge in some area under RAJUK but the petitioner has not been given charge at Banani and lastly the petitioner has been posted in Sub-Zone-4/3; the petitioner No.02 namely Md. Mostafizur Rahman was appointed as Chief Building Inspector pursuant to an appointment letter

dated 19.10.2015 and he joined in the post on 29.10.2015. Thereafter he was posted on 06.12.2015 at Zone-8, RAJUK and subsequently on 15.03.2016 he was given charge to Zone-8/1. Later on he was posted at Zone-4/1 of RAJUK by an office order dated 04.10.2018. And lastly the petitioner was given charge to re-distributed area in which the petitioner was given charge in some areas including Banani.

Being aggrieved by the impugned letter contained in Memo being No.00.01.0000.501.01.035. 19-20460/1(5) dated 27.09.2020 (**Annexure-B**) issued by the Respondent No.03, to the Respondent No.01 for taking departmental action against the petitioners and the impugned letter contained in Memo No.25.00.0000.019.01.10.2010-336 dated 21.10.2020 (**Annexure-C**) issued by the Respondent No.02, the petitioners approached this court with an application under Article 102 of the Constitution of the People's Republic of

Bangladesh and obtained this Rule along with an order of stay of the impugned letters.

At the very outset, Mr. Yousuf Hossain Humayun, the learned Senior Advocate along with Mr. Md. Motiur Rahman, the learned Advocate appearing on behalf of the petitioners, submits that the alleged building namely F.R. Tower situated at 32, Kamal Ataturk Avenue, Banani, Dhaka was constructed from 2003-2006 in changing design to 23rd floor in place of 18th floor without receiving any no objection certificate from the Estate Branch and thereafter on 12.09.2007 for changing design of the said building a memo was issued to the Director (Development and Control) and Authorized Officer-2, RAJUK, Dhaka for taking legal step but no step was taken; the petitioners were appointed on 19.10.2015 (Annexure-D and E) and as such they were not aware about the construction of the building on which an accident occurred on 28.03.2019 and as such, both the impugned letters are mala fide with an ulterior

motive and capricious in nature and those are liable to be declared illegal and are of no legal effect.

He then very strongly submits that the petitioners were appointed on 19.10.2015; the petitioner No.01 never and ever was in charge at the concerned zone of Banani where the F.R. Tower is situated; on the other hand, the petitioner No.2 was in charge at Banani under Zone-4/1 by a letter dated 02.01.2019 although the building namely F.R. Tower is situated at Banani Commercial Area, 32, Kamal Ataturk Avenue, Banani, Dhaka which was constructed from 2003 to 2006; before joining in the service by the petitioner No.02, many Chief Building Inspectors were in charge at the Banani area but the petitioner No.02 is most illegally and arbitrarily implicated in connection with the incident taken place on 28.03.2019 and as such, both the impugned letters have been issued illegally, whimsically and arbitrarily and those are liable to be declared illegal and are of no legal effect.

He candidly submits that this petitioners had no involvement in giving plan and making construction of the building in question; so they are not involved at all; as such, the impugned letters for initiating departmental proceeding against the petitioners are not lawful in the eye of law.

Mr. Yousuf Hossain Humayun lastly submits that the petitioners are employees of Rajuk, so, the Anti-Corruption Commission has no authority to issue any letter directing Ministry of Housing and Public Works/RAJUK to start departmental proceeding against the petitioners and in that view of the matter, the impugned letter issued by the Anti-Corruption Commission and the impugned letter issued by the Ministry of Housing and Public Works are illegal without lawful authority and are of no legal effect.

On the other hand, Mr. Md. Khurshid Alam Khan, the learned Senior Advocate appearing for the Anti-Corruption Commission, has submitted affidavit-in-

opposition and submits that against the ad-interim order of stay dated 10.11.2020 passed by the High Court Division in Writ Petition No. 7890 of 2020, the Respondent No.3-Durntiy Daman Commission preferred Civil Petition For Leave To Appeal No. 2215 of 2021 along with an application for stay before the Hon'ble Appellate Division; the said application for stay was placed on 01.11.2021 before the learned Judge-in-Chamber of the Appellate Division seeking for an order of stay of the ad-interim order of the High Court Division; on 01.11.2021, the Hon'ble Judge-in-Chamber after hearing the parties, passed the following order-

“Stay, as prayed for, is granted for 6(six) weeks.

Let the leave petition be posted for hearing in the list on 13th December, 2021.”

He next submits that the said Civil Petition for Leave to Appeal No.2215 of 2021 came up in the daily cause list for hearing on 13.12.2021 before the Appellate Division; the learned Judges of the Appellate Division

after hearing the parties, disposed of the above mentioned civil petition with observations and directions to the effect that the order of stay granted earlier by the learned Judge-in-Chamber of the Appellate Division be continued till disposal of the Rule, which is evident from the photocopy of the certified copy of the order dated 13.12.2021 passed by the Appellate Division in Civil Petition No.2215 of 2021.

He further submits that one Ms. Lutfun Nahar, Deputy Secretary, Ministry of Housing and Public Works, issued a letter to initiate departmental proceeding against the writ petitioners and others under Memo No.২৫.০০.০০০০.০১৯.০১.১০.২০১০-৩৩৬ dated 21.10.2020 with the following terms:

উপর্যুক্ত বিষয় ও সূত্রস্থ স্মারকের প্রেক্ষিতে দুর্নীতি দমন কমিশন হতে প্রাপ্ত পত্র (সংলগ্নীসহ) এ সঙ্গে প্রেরণ করা হলো। এফ আর টাওয়ার, ১২ কামাল আতাতুর্ক এভিনিউ, বনানী, ঢাকা অবৈধভাবে নির্মানের পর আইনগত ব্যবস্থা গ্রহণ না করে দায়িত্ব পালনে অবহেলার কারণে গত ০৮-০৩-২০১৯ তারিখে অগ্নিকান্ডে জনসাধারণের জানমালের ব্যাপক ক্ষতিসাধনের অভিযোগ

দুর্নীতি দমন কমিশন হতে অনুসন্ধান করা হয়। অবৈধভাবে ভবন নির্মাণের পর আইনগত ব্যবস্থা গ্রহণ না করে দায়িত্ব পালনে চরম অবহেলার কারণে কমিশন কর্তৃক রাজধানী উন্নয়ন কর্তৃপক্ষ (রাজউক) এর নিম্নবর্ণিত ১৬ (ষোল) জন কর্মকর্তা/কর্মচারীর বিরুদ্ধে বিভাগীয় ব্যবস্থা গ্রহণের সিদ্ধান্ত গৃহীত হয়েছে।

৮। জনাব মোঃ মোস্তাফিজুর রহমান, প্রধান ইমারত পরিদর্শক, রাজধানী উন্নয়ন কর্তৃপক্ষ, ঢাকা।

৯। জনাব কাওছার আহমেদ, প্রধান ইমারত পরিদর্শক, রাজধানী উন্নয়ন কর্তৃপক্ষ, ঢাকা।

He humbly submits that in view of the above memo, it appears that this is totally internal affairs of the Government, and that the internal affairs of the Government with regard to the Departmental proceeding are not amenable to writ jurisdiction nor entertainable by this court under the writ jurisdiction; it is an usual course of the concerned Ministry and as such, the writ petition is not maintainable in the eye of law.

He candidly submits that from the annexure-B series of the writ petition, it appears that a proceeding under Rule 38(Ka) of the Rajdhani Unayan Kortipakkha

(Kormokorta/Kormochari) Bidhimala, 2013, has already been initiated for misconduct of the writ petitioners as well as negligence of the petitioners, which is now pending before the RAJUK and as such, in view of the **Annexure-B** series as contained in the writ petition, the writ petition itself is not maintainable and as such, the Rule is liable to be discharged with a direction to the RAJUK to proceed with the departmental proceeding in accordance with law.

He categorically submits that the law is now well settled that without challenging the vires of law, the departmental proceeding cannot be challenged; it is evident from the instant Rule that no vires of law nor of Rules has been challenged and as such, on that ground alone, the Rule may kindly be discharged with costs.

He additionally submits that the writ petition is not maintainable since a departmental proceeding has already been started by the RAJUK against the petitioners.

He lastly with the reference to (Annexure-C) to the writ petition, points out that it is true that the petitioners joined in the RAJUK after the alleged incident of fire and death of some people at the F. R. Tower but after the completion of the construction of the F.R. Tower, the petitioners being responsible service holders did not take any step with regard to the mismanagement and irregularity occurred therein, so it is not the fact that the petitioners are not involved and responsible for the alleged offences, rather the fact is that they are implicated in this matter because of the fact that they did not take any steps after the completion of the construction of the F.R Tower being responsible persons; since the departmental proceeding has already been started, it may proceed without any interruption in accordance with law and considering all the aspects of the matter, the Rule is liable to be discharged with costs.

We have gone through the application under Article 102 of the Constitution of People's Republic of

Bangladesh, the affidavit-in-opposition and the materials annexed thereto. We have also heard and considered the submissions advanced by the learned Advocates for the petitioners, the Anti-Corruption Commission and the learned Deputy Attorney-General with the best of our wit and wisdom. We have also perused and gone through the statements of the writ petition, the affidavit-in-opposition and the grounds taken in the writ petition.

It stems out from the record that the Anti-Corruption Commission after holding enquiry into the incident of F.R. Tower came to know that the petitioners joined in the RAJUK after alleged incident of fire, death of 25 persons and serious injury of 73 persons but after the completion of the construction of the F.R. Tower, the petitioners being responsible service holders did not take any step with regard to the mismanagement and irregularity occurred therein.

Following the above facts and circumstances, the Anti-Corruption Commission issued the impugned letter

(Annexure-B) to the Secretary, Ministry of Housing and Public Works requesting him/her to initiate departmental proceeding against the present writ petitioners and 14 others.

In view of the above, one Ms. Lutfun Nahar, Deputy Secretary, Ministry of Housing and Public Works issued a letter to the Respondent No.04 to initiate departmental proceeding against the writ petitioners and others being Memo No.২৫. ০০. ০০০০. ০১৯. ০১. ১০. ২০১০-৩৩৬ dated 21.10.2020 with the following terms:

উপর্যুক্ত বিষয় ও সূত্রস্থ স্মারকের প্রেক্ষিতে দুর্নীতি দমন কমিশন হতে প্রাপ্ত পত্র (সংলগ্নীসহ) এ সঙ্গে প্রেরণ করা হলো। এফ আর টাওয়ার, ১২ কামাল আতাতুর্ক এভিনিউ, বনানী, ঢাকা অবৈধভাবে নির্মানের পর আইনগত ব্যবস্থা গ্রহণ না করে দায়িত্ব পালনে অবহেলার কারণে গত ০৮-০৩-২০১৯ তারিখে অগ্নিকাণ্ডে জনসাধারণের জানমালের ব্যাপক ক্ষতিসাধনের অভিযোগ দুর্নীতি দমন কমিশন হতে অনুসন্ধান করা হয়। অবৈধভাবে ভবন নির্মানের পর আইনগত ব্যবস্থা গ্রহণ না করে দায়িত্ব পালনে চরম অবহেলার কারণে কমিশন কর্তৃক রাজধানী উন্নয়ন কর্তৃপক্ষ (রাজউক) এর নিম্নবর্ণিত ১৬ (ষোল) জন কর্মকর্তা/কর্মচারীর বিরুদ্ধে বিভাগীয় ব্যবস্থা গ্রহণের সিদ্ধান্ত গৃহীত হয়েছে।

৮। জনাব মোঃ মোস্তাফিজুর রহমান, প্রধান ইমারত পরিদর্শক, রাজধানী উন্নয়ন কর্তৃপক্ষ, ঢাকা।

৯। জনাব কাওছার আহমেদ, প্রধান ইমারত পরিদর্শক, রাজধানী উন্নয়ন কর্তৃপক্ষ, ঢাকা।

In view of the above memo, it appears that this is totally internal affairs of the Government, and the the internal affairs of the Government with regard to the Departmental proceeding are not amenable to writ jurisdiction nor entertainable by this court under the writ jurisdiction. It is an usual course of the concerned Ministry.

From the annexure-B series to the writ petition, it appears that a departmental proceeding under Rule 38(Ka) of the Rajdhani Unayan Kortipakkha (Kormokorta / Kormochari) Bidhimala, 2013, has already been initiated for misconduct of the writ petitioners as well as negligence of the petitioners, which is now pending before the RAJUK.

It is now well settled principle of law that without challenging the vires of law, the departmental proceeding cannot be challenged. It is evident from the instant Rule that no vires of law nor of Rules has been challenged.

It is evident from the record that a departmental proceeding has already been started by the RAJUK against the petitioners.

As per submission of the learned Advocates for the petitioners, the alleged building namely F.R. Tower situated at 32, Kamal Ataturk Avenue, Banani, Dhaka was constructed from 2003-2006 in changing design to 23rd floor in place of 18th floor without receiving any no objection certificate from the Estate Branch and thereafter on 12.09.2007 for changing design of the said building a memo was issued to the Director (Development and Control) and Authorized Officer-2, RAJUK, Dhaka for taking legal step but no step was taken; the petitioners were appointed on 19.10.2015

(Annexure-D and E) and as such they were not aware about the construction of the building on which an accident occurred on 28.03.2019.

It appears from the submissions of the learned Advocates for the petitioners that the petitioners were appointed on 19.10.2015; the petitioner No.01 never and ever was in charge at the concerned zone of Banani where the F.R. Tower is situated; on the other hand, the petitioner No.2 was in charge at Banani under Zone-4/1 by a letter dated 02.01.2019 although the building namely F.R. Tower is situated at Banani Commercial Area, 32, Kamal Ataturk Avenue, Banani, Dhaka which was constructed from 2003 to 2006; before joining in the service of the petitioner No.02, many Chief Building Inspectors were in charge at the Banani area but the petitioner No.02 is most illegally and arbitrarily implicated in connection with the incident taken place on 28.03.2019.

It is argued on behalf of the petitioners that the petitioners had no involvement in giving plan and making construction of the building in question, so they are not involved at all and under the circumstances, the impugned orders/letters for initiating departmental proceeding against the petitioners are not lawful in the eye of law.

It is categorically argued by the petitioners that the petitioners are the employees of RAJUK and for this reason, the Anti-Corruption Commission has no authority to issue any notice or letter requesting the Ministry of Housing and Public Works/RAJUK to start departmental proceedings against the petitioners.

In this regard, section 17 of the Anti-Corruption Commission Act, 2004 may be referred to address this submission. Section 17 of the Anti-Corruption Commission Act, 2004 contemplates that the Commission may perform the following functions among others:-

17(g) to create feeling of honesty and integrity in order to prevent corruption and to take measures to raise public awareness against corruption;

17(i) to identify various sources of corruption existing in Bangladesh in the context of socio-economic conditions and submit recommendations to the President for taking necessary steps;

17(k) to perform such other functions as may be necessary for prevention of corruption.

In view of the above proposition of law, the Anti-Corruption Commission may issue any letter to any department of the government with a view to taking necessary steps for stopping the prevention of corruption if found by the Anti-Corruption Commission during enquiry and/or investigation into allegations of corruption and other scheduled offences.

Anyway, considering the submissions and counter submissions of the learned Advocates for the parties, we are of the view that the allegations that have been

brought against the petitioners are highly disputed and complicated questions of fact which cannot be decided by this court under its writ jurisdiction. It is now well settled that the disputed questions of fact can only be decided on taking evidence. Under the circumstances, there is no bar to proceed with the departmental proceeding against the petitioners and others. The pious wish of this court is that the petitioners are the service holders and they should be dealt with in accordance with law and proper opportunity should be given to them so that they can defend themselves by adducing proper evidence and materials at the departmental proceeding initiated against them and the authorities shall proceed and conduct the departmental proceeding following the Rules of the Rajdhani Unnayan Kortripakkha (Kormokorta/Kormochari) Bidhimala, 2013 along with other related laws and rules if required following the due process of law.

**With the aforesaid observation and direction,
the writ petition is disposed of.**

The order of stay of the impugned letters
(Annexure-B and C to the writ petition) passed at the
time of issuance of the Rule stands vacated.

The concerned respondents shall be at liberty to
proceed with the departmental proceeding against the
petitioners and others in accordance with law.

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

Khizir Hayat, J:

I agree.