

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

Present:

Mr. Justice Mustafa Zaman Islam

And

Mr. Justice Md. Atabullah

WRIT PETITION NO. 10959 OF 2021

WITH

WRIT PETITION NO. 8787 OF 2023

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

... Petitioner

-Versus-

The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Civil Aviation and Tourism, Secretariat Building, Ramna, Dhaka and others

... Respondents

(In Writ Petition No. 10959 of 2021)

AND

Bengal Airlift Aviation Ltd.

-Versus-

The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat Building, Ramna, Dhaka-1000 and others

... Respondents

(In Writ Petition No.8787 of 2023)

Mr. Md. Faizullah, Advocate

... For the petitioner in both Writ

Petitions

Mr. Tushar kanti Roy, Deputy Attorney General with

Ms. Anis-ul-Mawa, Assistant Attorney General and

Mr. Md. Salim Azad, Assistant Attorney General.

... For the respondents.

Heard on 05.12.2023, 04.01.2024

and Judgment on 25.01.2024.

Mustafa Zaman Islam, J:

The Writ Petition Nos. 10959 of 2021 and 8787 of 2023 have been taken together as the facts and laws involved are same and are disposed of by this single and common judgment.

In Writ Petition No. 10959 of 2021 a *Rule Nih*i was issued calling upon the respondents to show cause as to why the Office order dated 02.09.2021 passed by the respondent No. 2 in Appeal No. 98 of 2021 (Annexure-D) disallowed the appeal by upholding the order dated 31.08.2021 passed by the respondent No. 3 (License registration authority) rejecting the application for renewal of the "Travel Agency License" of the petitioner, being License No. 0008408, should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.

In Writ Petition No. 8787 of 2023 a *Rule Nisi* was issued calling upon the respondents to show cause as to why the impugned order dated 11.07.2023 passed by the respondent No. 2 in Appeal No. 65 of 2023 (Annexure-G-1) and affirming the order vide Memo No. 30.00.0000.025.31.004.19 dated 11.06.2023 passed by the respondent No. 4 refusing to renew the license and cancelling the license of petitioner's Travel Agency namely "Bengal Airlift Aviation Ltd" (Annexure-F) should not be declared to have been passed without lawful authority and is of no legal effect and why the respondents should not be directed to renew license of the Travel Agency namely "Bengal Airlift Aviation Ltd" and

allow to continue the business and/or such other or further order or orders passed as to this court may seem fit and proper.

Relevant facts for disposal of the Rule are that the petitioners of both writ petitions are registered Travel Agency. Those companies have been carrying their business by paying Tax and VAT with good reputation. Due to Corona Pandemic situation their license were not renewed in time for which the tenure of the licenses have been lapsed and the petitioners of both writ petitions applied for the renewal of the licenses to the authority. That after applying for the renewal of the licenses the renewal authority rejected their prayer on the ground that the applications for renewal of the licenses have filed out of time for which according to the Bangladesh Travel Agency (registration and control) Ain, 2021 there is not scope to renew the license accordingly, and those applications were rejected.

Being aggrieved by and dissatisfied with those orders the petitioners of both writ petitions preferred appeals before the appellate authority. After being heard the appellate authority also rejected their appeals on the ground that the registration authority legally rejected their applications.

Feeling aggrieved by and dissatisfied with those rejection orders the petitioners filed applications under Article 102 of the Constitution of the People's Republic of the Bangladesh before this court and obtained those present Rules.

Mr. Md. Faizullah, learned Advocate appearing for the petitioners in both writ petitions submits that the impugned office orders passed by the respondents in appeals have been issued violating the principle of natural

justice in view of the fact that the petitioner were not aware about the limitation time. The authority has jurisdiction to consider the situation beyond control, hardship, beneficial fact for the national economy but without considering the same the respondents have cancelled the licenses which were upheld by the appellate authority which are illegal. He further submits that due to "pandemic situation" the Travel Agency business became fully collapsed like other Travel Agency but the appellate authority without taking into consideration most illegally, malafide and exercise of power passed the impugned orders. Mr. Faizullah adds that an intention to cancel the license of the petitioners' agency, in collusion with some vested interested groups the respondents in a less category allegation awarded highest punishment which is nothing but illegal, malafide, colorful exercise of power. He further adds that every citizen has right to carry on lawful business but the impugned orders, the respondents have violated fundamental rights of the petitioners as guaranteed in Article 42 of the Constitution of the People's Republic of Bangladesh as such impugned orders of cancellation of licenses by the respondents declared to be without lawful authority and is of no legal effect.

Mr. Tushar kanti Roy, learned Deputy Attorney General appearing for the respondents submits that there are clear provisions in section 9(1)(g) of Bangladesh Travel Agency (Registration and Control) Act, 2013 and sections 5(1) and 5(2) of Bangladesh Travel Agency (Registration and Control) Act, 2022 the authority has power to cancel the registration/license due to violate the terms and conditions of this Act. He

further submits that it is mandatory to renew the license within the stipulated period of time, but the petitioners in both the writ petitions without doing so to file applications for renewal of licenses before the authority with long delay which is clear violation of section 9(1)(gha) of Bangladesh Travel Agency (Registration and Control) Act, 2013 and sections 5(1) and 5(2) of Bangladesh Travel Agency (Registration and Control) Act, 2022. He further submits that the Respondents lawfully cancelled the registrations/licenses of the both the writ petitioners and there is no violation of section 9(1)(gha) of Bangladesh Travel Agency (Registration and Control) Act, 2013 and sections 5(1) and 5(2) of Bangladesh Travel Agency (Registration and Control) Act, 2022. Under such circumstances he prayed for discharging the Rule for ends of justice.

We have heard both the sides and perused the materials on record meticulously and examined the relevant laws.

It is admitted that the business of the Travel Agency became fully collapsed like other Travel Agency due to the "Pandemic Situation" but the appellate authority without taking into consideration most illegally, malafide, exercised of power passed the impugned office orders. It is also admitted that there are clear provisions in section 9 of Bangladesh Travel Agency (Registration and Control) Act, 2013, the registration can be canceled by the registration authority but in the impugned orders neither the registration authority nor the appellate authority mentioned any reasons from the said reasons but they have cancelled the license which is clear violation of law. That the petitioners made delay in submission of the

application due to pandemic situation, death of the Chairman of the company of Bengal Airlift Aviation Ltd. and the Managing Partner of the Company of Musafir Air Travels was effected by the Covid-19 which are valid cause and for the humanitarian reasons the causes can be considered but the authority mentioned that that is no chance to consider the same which is not based on the provisions of law.

To start with, let us have a look on the extract of the relevant laws which runs as follows:

৓৯। নিবন্ধন সনদ স্থগিত বা বাতিল।-(১) নিবন্ধন কর্তৃপক্ষ নিম্নবর্ণিত কোন কারণ উপযুক্ত তদন্ত ও শুনানির সু-যাগ প্রদান করিয়া কোন ট্রা-ভল এ-জন্সির নিবন্ধন স্থগিত বা বাতিল করি-ত পারি-ব, যথা:-

(ক) মিথ্যা তথ্য বা প্রতারণার মাধ্য-ম নিবন্ধন সনদ গ্রহণ করি-ল;

(খ) এই আইন, বিধি বা নিবন্ধন সন-দর কোন শর্ত ভঙ্গ করি-ল;

(গ) ট্রা-ভল এ-জন্সিসমূ-হর জন্য নির্ধারিত আচরণ বিধির কোন বিধান লংঘন করি-ল;

(ঘ) নির্ধারিত সম-য়র ম-ধ্য নিবন্ধন নবায়ন না করি-ল;

(ঙ) নিবন্ধন সনদ প্রাপ্তির পর সংশ্লিষ্ট ব্যক্তি কোন ফৌজদারি অপরা-ধ দণ্ডিত হই-ল; অথবা

(চ) কোম্পানি, সংস্থা, অংশীদারি কারবার বা আইনগত সত্ত্বার ক্ষে-ত্র উহার অবসায়ন হই-ল।ö

First of all, let us consider whether or not the Registration authority has the power to cancel the license of the petitioner's Travel Agency. As per clause 9(1) of the Bangladesh Travel Agencies (Registration and control) Ain,-2013 for which registration can be cancelled subject to Condition that if the authority cancel the registration of the Travel Agency, it must provide an opportunity for investigation and hearing. As could be seen the impugned orders neither the registration authority nor the appellate

authority mentioned any reasons from the said reason, but the authority has cancelled the licenses which are clear violation of natural justice. It is a basic principle of natural justice that no one can be penalized on the ground of conduct of the petitioner's agency and notice and hearing are to be given before the decision is taken.

In the light of the above deliberation, we find merit in those Rules.

In the result, both the Rules are made absolute and hereby declared that In Writ Petition No. 10959 of the Office order dated 02.09.2021 passed by the respondent No. 2 in Appeal No. 98 of 2021 (Annexure-D) disallowed the appeal by upholding the order dated 31.08.2021 passed by the respondent No. 3 (License registration authority) rejecting the application for renewal of the "Travel Agency License" of the petitioner, being License No. 0008408 and In Writ Petition No. 8787 of 2023 the impugned order dated 11.07.2023 passed by the respondent No. 2 in Appeal No. 65 of 2023 (Annexure-G-1) and affirming the order vide Memo No. 30.00.0000.025.31.004.19 dated 11.06.2023 passed by the respondent No. 4 refusing to renew the license and cancelling the license of petitioner's Travel Agency namely "Bengal Airlift Aviation Ltd" (Annexure-F) without lawful authority and is of no legal effect.

Communicate the copy of the judgment and order at once.

However, there is no order as to cost.

(Mustafa Zaman Islam, J.)

(Md. Atabullah, J.)

I agree.



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(Md. Atabullah, J.)