

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

Writ Petition No. 1727 of 2022

In the matter of :

An application under Article 102(2) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of :

Ehsan Abdullah Siddiq

..... Petitioner

-Versus-

Bangladesh, represented by the Foreign Secretary, Ministry of Foreign Affairs, and others.

..... Respondents

Mr. Imran A. Siddiq , Advocate with
Mr. Syed Mohammad Raihan Uddin , Advocate
.... For the Petitioner

Mr. A.B.M. Abdullah Al Mahmud, DAG with
Mr. Mohammad Abul Hasan, AAG,
Mr. A.K.M. Alamgir Parvez Bhuiyan, AAG and
Ms. Rawsan Ara Rahman, AAG

..... For Respondent no. 1

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Kazi Ebadoth Hossain

Date of Hearing : 06.06.2023

Date of Judgment : 06.08.2023

Zubayer Rahman Chowdhury, J :

The refusal by the High Commission of Bangladesh in London to authenticate the Power of Attorney executed by the parents of the petitioner in his favour has led to the filing of this application under

Article 102(2) of the Constitution. At the same time, the petitioner has prayed for issuance of a direction upon the respondents to attest the Power of Attorney in question. At the time of issuance of the Rule, the respondents were directed to dispose of the petitioner's application dated 23.11.2021, as evidenced by Annexure-C to the writ petition, within fifteen working days from the date of receipt of the order.

The Rule is being opposed by respondent no. 1 by filling an affidavit-in-opposition.

A Power of Attorney was executed in favour of the petitioner, who is a practicing Advocate of the Supreme Court of Bangladesh, by his parents residing in London, United Kingdom for the purpose of selling their property located at Mohammadpur, Dhaka. The parents of the petitioner, being the Grantors of the Power of Attorney (hereinafter referred to as the Grantors), made an appointment on 21.10.2021 with the High Commission of Bangladesh, London, (briefly, the High Commission) for attestation of the said Power of Attorney ((hereinafter after referred to as the document). However, the concerned official of the High Commission asked them to come on 26.10.2021 and accordingly, both the Grantors went to the High Commission once again on the assigned date. The concerned official received the document and, having scrutinized the same, asked both the Grantors to append their signature

and also affix their thumb impression on every page of the document, who duly complied with the said instruction. However, it was returned to the Grantors without any attestation, but before doing so, the concerned official obliterated the signatures and the thumb impressions of both the Grantors with black ink and informed them that prior permission would be required from the higher Authorities in Bangladesh before attesting the document and on that ground, the concerned official declined to complete the execution process of the Power of Attorney.

The petitioner issued a Notice Demanding Justice on 02.12.2021, but the respondents did not respond to the same. Being aggrieved, the petitioner moved this Court and obtained the instant Rule.

Mr. Imran Siddiq, the learned Advocate appearing along with Mir Osman Bin Nasim and Mr. Syfullah Al Mazahid, the learned Advocates submits that the conduct of the official at the High Commission in London in refusing to attest the Power of Attorney is palpably arbitrary and malafide and hence without lawful authority . He submits that despite enquiries made by the Grantors, no satisfactory explanation could be provided by the concerned official for refusing to attest the document in question, although the Grantors had fulfilled the legal requirements and submitted all the relevant documents before the High Commission in London.

Referring to the relevant provisions of the Vienna Convention of 1963, to which Bangladesh is a signatory, Mr. Siddiq submits that it is incumbent upon all the Missions of Bangladesh to provide necessary assistance to its citizens. He submits that the parents of the petitioner, being Bangladeshi citizens by birth, but presently residing in the United Kingdom, are legally entitled to be accorded that privilege. Mr. Siddiq submits that the action of the concerned official has not only caused agony and harassment to the Grantors, it has also prevented them from disposing of their property, which they are legally entitled to do.

As noted earlier, the Rule is being opposed by respondent no. 1 by filing an affidavit-in-opposition. Mr. Abdullah Al Mahmud, the learned Deputy Attorney General (briefly, the learned DAG) refers to the relevant provision of the Passport Act and submits that it is a mandatory requirement for any Bangladeshi citizen residing abroad and intending to obtain attestation of a Power of Attorney, to produce a valid passport issued by the Government of Bangladesh. Referring to the relevant provision of the Passport Act and the Power of Attorney Rules, 2015, the learned DAG submits that as the Grantors of the Power of Attorney failed to comply with the legal requirements, the High Commission in London was unable to complete the process of attestation.

Replying to the contention of the learned DAG that the Grantors were unable to produce a valid passport issued by the Government of Bangladesh, Mr. Siddiq refers to the supplementary affidavit dated 11.05.2023 and submits that the Grantors applied for renewal of their Bangladesh passport on 10.11.2022 and the High Commission issued a delivery slip, mentioning 15.12.2022 as the tentative date of collection. He submits that the petitioner's mother, being one of the Grantors of the Power of Attorney, received her Bangladesh passport from the Bangladesh High Commission in London on 22.11.2022. However, the petitioner's father, being the principle Grantor of the Power of Attorney, has not received his passport till date. Nevertheless, according Mr. Siddiq, both the Grantors, being British citizens, did produce a valid passport issued by the Government of the United Kingdom before the concerned official of the High Commission in London.

Mr. Siddiq contends that the said Rule requires the production of either the National ID (জাতীয় পরিচয়পত্র) or Birth Registration Certificate (জন্ম নিবন্ধন সনদপত্র) or Passport (পাসপোর্ট)। Relying on Rule 10(4), read with Rule 9(3)(Ka), Mr. Siddiq submits forcefully that on a combined reading of the above noted provisions, it is clear that at the time of attestation of a Power of Attorney at any Bangladesh Mission located abroad, it is necessary to produce any one of the three documents.

Mr. Siddiq acknowledges that the learned DAG was correct in submitting that the petitioner's parents were unable to produce a valid passport issued by the Government of Bangladesh. However, he contends that the requirement stipulated in the relevant Rule requires the production of a "valid passport" without mentioning or specifying any particular country. He submits that under the law of Bangladesh, a citizen of this country can hold dual citizenship, meaning thereby that a Bangladeshi national can hold two valid passports at the same time. He submits that both the Grantors of the Power of Attorney had produced valid passports issued by the Government of the United Kingdom and therefore, they shall be deemed to have complied with the requirement of the Power of Attorney Rules, 2015.

On a practical note, Mr. Siddiq submits that the failure/inability of the Grantors to produce a valid Bangladesh passport was not on account of any fault or laches on their part; rather, the impediment, if any, was created by the respondents themselves in that although both the Grantors had applied for renewal of their Bangladeshi passport, the High Commission did not renew the Bangladeshi passport of the principle Grantor of the Power of Attorney, for reasons best known to them.

In the instant case, the factual issue is not in dispute. The petitioner's parents, who are currently residing in the United Kingdom,

executed a Power of Attorney in favour of their son (the petitioner) for the purpose of selling their property located at Mohammadpur, Dhaka and presented the same before the High Commission of Bangladesh in London for attestation.

On a perusal of the Power of Attorney, it appears that the signatures and the thumb impressions of both the Grantors and the date of the Power of Attorney have been obliterated with black ink. It is the contention of Mr. Siddiq that this act of obliterating the signature and thumb impression of both the Grantors in the Power of Attorney was deliberately done by the concerned official with an ulterior and malafide motive.

The contention so advanced by Mr. Siddiq receives positive corroboration from Annexure 3 of the affidavit-in-opposition filed on behalf of contesting respondent no. 1, which appears to be the photocopy of the very same Power of Attorney that was executed by the petitioner's parents, wherefrom it appears that the signatures and the thumb impressions of both the Grantors as well as the signature of the recipient of the Power of Attorney have been obliterated with black ink. Obviously, it does not stand to reason as to why that the Grantors would themselves obliterate their signatures and thumb impressions and then submit the same before the High Commission for attestation. Therefore, we find

substance in the contention of Mr. Siddiq that the concerned official of the High Commission in London was responsible for such obliteration.

Let us now refer to the relevant provisions of law. Rule 2(C) of the Bangladesh Passport Order, 1973 defines passport as under:

“Passport” means a passport issued or deemed to have been issued under this Order”.

Rule 9 of the Power of Attorney Rules, 2015 reads as under:

- ৯। অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নি নিবন্ধন-পূর্ব অনুসরণীয় পদ্ধতি।-
- (১).....
- (২).....
- (৩) উপ-বিধি (২) এ যাহা কিছুই থাকুক না কেন, আইনের উদ্দেশ্য পূরণকল্পে উক্তরূপ দিলে, অন্যান্য বিষয়ের মধ্যে, নিম্নবর্ণিত বিষয়াদি অন্তর্ভুক্ত বা, ক্ষেত্রমত, কাগজ-পত্র সংযুক্ত করিতে হইবে, যথা:-
- ৩(ক) পাওয়ারদাতা এবং পাওয়ারগ্রহীতা উভয়ের জাতীয় পরিচয়পত্র বা জন্ম নিবন্ধন সনদ বা পাসপোর্টের ফটোকপি;

Rule 10 of the said Rules of 2015 stipulates as under:

- (১০) বাংলাদেশের বাহিরে সম্পাদিত পাওয়ার অব অ্যাটর্নি।-
- (১)
- (২)
- (৩)
- (৪) উপ-বিধি (২) ও (৩) এ যাতা কিছুই থাকুক না কেন, আইনের উদ্দেশ্য পূরণকল্পে উক্তরূপ পাওয়ার অব অ্যাটর্নি দিলে পাওয়ারদাতার পাসপোর্টের বিবরণসহ বিশেষ পাওয়ার অব অ্যাটর্নি দিলে ক্ষেত্রে বিধি ৭ এর উপ-বিধি (৪), সাধারণ পাওয়ার অব অ্যাটর্নি দিলে ক্ষেত্রে বিধি ৮ এর উপ-বিধি (৩) এবং অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নি দিলে ক্ষেত্রে বিধি ৯ এর উপ-বিধি (৩) এর বর্ণিত বিষয়াদি অন্তর্ভুক্ত বা, ক্ষেত্রমত, কাগজ-পত্র সংযুক্ত করিতে হইবে।

On a careful perusal of the provisions quoted above, it is apparent that for the purpose of attesting a Power of Attorney at any Bangladesh Mission abroad, the executors of the Power of Attorney are required to

produce any one of the three documents mentioned in the Rule namely, the National ID Card (জাতীয় পরিচয়পত্র) or Birth Registration Certificate (জন্ম নিবন্ধন সনদপত্র) or Passport (পাসপোর্ট)। The word used in Rule 9(3)(ka) of the Rules of 2015 is “or” meaning thereby that the requirement is disjunctive and therefore, production of any one of the three documents mentioned in the said Rule shall suffice to serve the purpose of the Rule.

Furthermore, the term used in Rule 2(C) of The passport Order, 1973 is “Passport”, without specifying any country of origin.

We have taken note of the provisions of the Vienna Convention on Consular Relations, 1963 to which Bangladesh appended its signature on 13 January 1978. Article 5 of the said Convention reads as under:

“Consular functions consists in

(a).....

(b).....

(c).....

(d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

Admittedly, both the Grantors are “nationals” of the ‘sending State’, i.e; Bangladesh.

In the instant case, the Grantors of the Power of Attorney, being British citizens, produced a valid passport issued by the Government of the United Kingdom in compliance with the requirement of the Rules.

Therefore, the refusal of the concerned official of the High Commission to attest the Power of Attorney on the ground that the Grantors failed to produce a valid passport issued by the Government of Bangladesh does not hold good. In this context, I am reminded of the dictum of Lord Reid, pronounced half a century ago in the case of *Gill vs Donald Humberstone & Company Ltd*, reported in [1963] 1 WLR 929, and I quote:

“If the language is capable of more than one interpretation, we ought to discard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practical result”.

The obliteration of the signatures and the thumb impressions of the Grantors appended in the Power of Attorney raises another important issue which, in our considered view, requires to be addressed. It concerns the ‘conduct’ of the concerned official, a public servant.

Section 166 of the Penal Code stipulates as under:

“Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

This section is quite unique in its application as it deals with the “conduct” of a “public servant”. Plainly stated, it means that while discharging official duties, if any public servant conducts himself/herself

in a manner which is not sanctioned by law or is in disregard to the provisions or directions of any law, either intending to cause, or knowing that it is likely to cause injury to any person, he/she is liable to be punished with fine or with simple imprisonment upto one year or with both.

In order to ascertain the meaning of the term “injury”, we need to refer to section 44 of the Penal Code, which reads as under:

“The word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.”

No doubt, the refusal by the official to attest the Power of Attorney has operated to the prejudice of the Grantors, thereby causing ‘injury’ to them, as defined in section 44 of the Penal Code.

Although it has been argued on behalf of the contesting respondent that the concerned official of the High Commission acted in accordance with law in refusing to attest the Power of Attorney since the Grantors had failed to produce a valid passport at the relevant time, the argument so advanced is incorrect. Rule 9(3)(ka) of the Passport Rules requires the production of a “valid passport”. Both the Grantors of the Power of Attorney, holding dual citizenship, did produce valid passports issued by the Government of the United Kingdom. In our view, this should be deemed to be in compliance with the aforesaid Rule as a Bangladeshi national is allowed, by law, to hold dual citizenship. Moreover, such conduct is in clear derogation of Article 21(2) of the Constitution, which requires every person in the service of the Republic “to strive at all times

to serve the people". Obviously, failure to act in accordance with the Constitution, being the supreme law at the county, will tantamount to "disobedience to the direction of law", as stipulated in Section 166 of the Penal Code.

Furthermore, Article 31 of the Constitution provides that it is the unalienable right of every citizen, wherever he may be, to be treated in accordance with law, and only in accordance with law. By incorporating the words "wherever he may be", the scope and application of this Article has been extended beyond the boundaries of Bangladesh. It is important to note that Article 31 finds a place in Part III of the Constitution relating to Fundamental Rights.

It should be borne in mind by each and every official engaged in the service of the Republic that they are to observe the laws and Rules, both in letter and spirit, while discharging their duties. Any act, which prejudicially affects any person, must have the sanction of law. In other words, the act(s) in question must be undertaken in pursuance of any law or Rule. This view of ours receives support from the judgment reported in AIR 1967 Supreme Court 1836. S.S Sawhney vs D. Ramarathnam and others, wherein it was observed (majority view):

"One of the aspects of Rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority."

(per K. Subba Rao, Chief Justice).

In the case referred to above, the learned Chief Justice further observed:

“While in the case of enacted law one knows where he stands, in the case of unchannelled arbitrary discretion, discrimination is writ large on the face of it. Such discretion patently violates the doctrine of equality, for the difference in the treatment of persons rests solely on the arbitrary selection of the executive:”

As has been so aptly stated by Verma, J in *S. Vidyarthi vs State of UP*, reported in AIR 1991 Supreme Court 537 and I quote:

“Non arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humor, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of the power”.

In this context, Lord Esher, MR’s pronouncement in the case of *R vs Vestry of St. Pancras*, reported in 24 QBD, 371 is apposite, which is as under:

“If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for guidance of their discretion, then in the eye of law they have not exercised their discretion”.

We could not agree more.

Although we were inclined to direct the concerned Authority for taking appropriate steps against the concerned official of the High Commission, we refrain from doing so. However, the concerned official is warned to be more diligent and cautious in the discharge of his official duties.

Be that as it may, having regard to the facts and circumstances of the case and having regard to the relevant provisions of law, in particular

to Article 5 of the Vienna Convention on Consular Relations, 1963 we are inclined to hold that the instant Rule merits positive consideration.

In the result, the Rule is made absolute.

The refusal/failure to attest the Power of Attorney, executed by the petitioners parents in his favour, is declared to have been done without any lawful authority.

The Granters of the Power of Attorney are directed to execute a fresh Power of Attorney and submit the same to the Bangladesh High Commission in London along with the all the necessary documents. The High Commission of Bangladesh, London is hereby directed to complete the process of attestation, within a period of 30 (thirty) days from the date of receipt of the certified copy of the judgment passed today.

Let a copy of this judgment be sent to the Secretary, Ministry of Foreign Affairs, the Director General of the concerned desk of the Ministry of Foreign Affairs and the High Commissioner of Bangladesh to the United Kingdom.

The Registrar General, Supreme Court of Bangladesh, is directed to ensure compliance with the aforesaid directive.

There will be no order as to costs.

Kazi Ebadoth Hossain, J:

I agree.

