

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

Present:

Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan
And
Mr. Justice Sardar Md. Rashed Jahangir

Writ Petition No. 4124 of 2022
with
Writ Petition No. 7964 of 2022
with
Writ Petition No. 15738 of 2022
with
Writ Petition No. 9102 of 2023
with
Writ Petition No. 9103 of 2023

IN THE MATTER OF:

Applications under Article 102 of the Constitution of the
People’s Republic of Bangladesh
A N D

IN THE MATTER OF:

Md. Moniruzzaman
... Petitioner

-Versus-
The Government of Bangladesh and others
... Respondents
(in writ petition No.4124 of 2022)
Dinajpur Chamber of Commerce and Industry & others
...Petitioners

-Versus-
The Government of Bangladesh and others
... Respondents
(in writ petition No.7964 of 2022)
Fire Fighting Equipment Business Owners Association of
Bangladesh and another
... Petitioners

-Versus-
The Government of Bangladesh and others
... Respondents
(in writ petition No.15738 of 2022)
Ikramul Hasan and others
... Petitioners

-Versus-
Zahangir Alam, Chairman, FBCCI Election Appeal Board and
others
... Respondents
(in writ petition No.9102 of 2023)
Md. Shafiqur Rahman and others
... Petitioners

-Versus-

Zahangir Alamin, Chairman, FBCCI Election Appeal Board
and others

... Respondents

(in writ petition No.9103 of 2023)

Mr. H.M. Shanjid Siddique, Advocate

...For the Petitioner

(in WP. No 4124 of 2022)

Mr. Mokarramus Shaklan, Advocate

...For the Petitioners

(in WP No. 7964 of 2022)

Ms. Syeda Nasrin, Advocate

...For the Petitioners

(in WP No 15738 of 2022)

Mr. A.K.M. Badrudduza, Advocate with

Mr. Md. Mohiuddin Ahmed Khan, Advocate

Mr. Md. Ibrahim Hossain, Advocate

Mr. Md. Didarul Islam Perves, Advocate

Ms. Rabeya Afroz, Advocate

Ms. Sabnam Mustary, Advocate and

Mr. Md. Shariful Islam, Advocate

...For the Petitioners

(in WP Nos. 9102 of 2023 and 9103 of 2023)

Mr. Imtiaz Moinul Islam, Advocate

...For the Respondent No. 3

(in W.P. No. 7964 of 2022, WP. No. 9102 and 9103 of 2023)

...For the Respondent No. 5

(in WP. No. 4124 of 2022)

...For the Respondent No. 6

(in WP. No. 7964 of 2022)

Mr. Mohammad Aneek R Haque, Additional Attorney General

...For the Government

(in all Writ Petitions)

Mr. A.K.M. Badrudduza, Advocate

...For the Respondent Nos. 5 & 8

(in W.P. No 15738 of 2022)

Mr. Md. Ekramul Hoque, Advocate

...For the Respondent No. 4

(in WP No. 9103 of 2023)

Mr. Ahsanul Karim, Advocate

Mr. ABM Siddiquir Rahman Khan, Advocate

Mr. M Mustafizur Rahman Khan, Advocate

... As Amici curiae

Judgment on: 11.03.2026

Md. Riaz Uddin Khan, J:

This Full Bench was constituted by the Hon'ble Chief Justice to hear and dispose of the Rules issued in the Writ Petition Nos. 4124 of 2022, 7964 of 2022, 15378 of 2022, 9102 of 2023 and 9103 of 2023.

Since common questions of law regarding the maintainability of the writ petitions are involved hence all these writ petitions are heard together and disposed of by this single judgment.

In writ petition No. 4124 of 2022 Rule *nisi* was issued asking the respondents to show cause as to why the *ex parte* decision dated 23.01.2022 given by the Arbitration Tribunal, FBCCI in Arbitration Case No.13 of 2021 under section 12(1) of the Trade Organizations Ordinance, 1961 disposing the reference by excluding the name of the petitioner as a Member of General Body of the FBCCI should not declared to have been passed without lawful authority and was of no legal effect. At the time of issuance of Rule, operation of the decision dated 23.01.2022 given by the Arbitration Tribunal, FBCCI in Arbitration Case No.13 of 2021 (Annexure-D1) was stayed a period of 6(six) months.

In writ petition No. 7964 of 2022 Rule *nisi* was issued calling upon the respondents to show cause as to why the impugned order dated 22.06.2022 passed in Arbitration Case No. 11 of 2021 by the Arbitration Tribunal, FBCCI setting aside the election of Dinajpur Chamber of Commerce and Industry held on 12.06.2021 should not be declared to have been passed without any lawful authority and is of no legal effect. At the time of issuance of Rule, the parties were directed to maintain status-quo in respect of possession and position of the subject matter of the Rule for a period of 03(three) months.

In writ petition No. 15738 of 2022 Rule *nisi* was issued asking the respondents to show cause as to why the judgment and order dated 06.07.2022 passed by the respondent No.4 allowing arbitration case so far cancellation of the termination of membership of the respondent Nos. 5-8 and directing the petitioners to restore their membership in the association (Annexure-D) should not be declared to have been passed without any lawful authority and is of no legal effect.

In writ petition No. 9102 of 2023 Rule *nisi* was issued asking the respondents to show cause as to why the impugned judgment and order dated 13.07.2023 passed by the

FBCCI Arbitrational Tribunal in Arbitration Case No. 09 of 2023 rejecting the same [regarding the representation of Bangladesh Grocery Business Association in the FBCCI Election Scheduled on 31.07.2023 for the term 2023-2024 & 2024-2025] should not be declared to have been passed without any lawful authority and is no legal effect and also as to why the FBCCI Election Board should not be directed to include the nominees of Bangladesh Grocery Business Association sent by Mr. Md. Abu Bakar Mia in the Voter List of FBCCI for the term 2023-2024 & 2024-2025.

In writ petition No. 9103 of 2023 Rule *nisi* was issued on 23.07.2023 calling upon the respondents to show cause as to why the impugned judgment and order dated 12.07.2023 passed by the FBCCI Arbitration Tribunal in Arbitration Case No.10 of 2023 rejecting the same [regarding the representation of Bangladesh Grocery Business Association in the FBCCI Election Scheduled on 31.07.2023 for the term 2023-2024 & 2024-2025] should not be declared to have been passed without any lawful authority and is no legal effect and also as to why the FBCCI Election Board should not be directed to include the names of the petitioners in the Voter List of FBCCI for the term 2023-2025. After issuance of Rule on 30.07.2023 the operation of impugned order dated 12.07.2023 passed by the Arbitration Tribunal in Case no.10 of 2023 was stayed and the FBCCI Election Board was directed not to allow the respondent nos.4-8 to cast their votes in FBCCI Election scheduled to be held on 31.07.2023 for the term 2023-2024 & 2024-2025.

Succinct facts of writ petition no.4124 of 2022 as stated by the petitioner are that the petitioner no.1 is the Proprietor of Global Agro Network, which is engaged in the business of producing organic foods. He is the elected Vice-President of the Bangladesh Organic Products Manufacturers Association for the term 2021-2023 of which

election was held on on 30.01.2021. The President of the said association forwarded names of 5 (five) members, which includes the petitioner, nominating them to represent the association in the General Body of the FBCCI for the term 2021-2023 and The Election Board of the FBCCI included their names in the final voters' list. The respondent No. 6 purportedly claims to have filed an appeal before the Election Appeal Board of the FBCCI and the appeal was not disposed of and then the respondent No. 6 filed Arbitration Case No. 13 of 2021, before the Arbitration Tribunal of the FBCCI and after an *ex parte* hearing on 23.01.2022, the Arbitration Tribunal disposed of the application directing to exclude the names of the petitioner and include the names submitted by the respondent No.6. Challenging the said decision of the Arbitration Tribunal the petitioner filed this writ petition before this Court.

Facts in brief of writ petition no.7964 of 2022 as stated by the petitioners are that the petitioner no.1 is a registered trade organization, the petitioner Nos. 2, 3 and 4 are the elected executive members of the Dinajpur Chamber of Commerce and Industry. The respondent Nos.4-6 on 09.08.2021 filed Arbitration Case No.11 of 2021 before the Arbitration Tribunal, FBCCI alleging *inter alia* that the election dated 23.02.2020 and 25.02.2021 of Dinajpur Chamber of Commerce & Industry and the activities of the executive committee are not lawful and consequently holding election by violating the election rules is illegal and the petitioner Nos.2-4 were disqualified persons for contesting in the election. The petitioners submitted written statement before the Arbitration Tribunal categorically denying all the allegations made in the complaint contending that accepting the final voter list the respondent Nos. 4-6 also participated in the election held on 12.06.2021 without any objection and never had any complaint for any non-compliance of any election rules and

when the respondent Nos. 4 to 6 lost in the election they becoming jealous filed the arbitration case. The Arbitration Tribunal by its decision dated 22.06.2022 set aside the said election against which the present writ petition is filed.

Facts in a nutshell of writ petition no.15738 of 2022 as stated by the petitioners are that the petitioner No.1 is a registered association under the Trade Organization Ordinance, 1961 and the petitioner No.2 is the president of the petitioner No.1. The respondent Nos.5-8 as petitioners filed Arbitration Tribunal Case No. 19 of 2022 before the FBCCI Arbitration Tribunal against the termination of their membership along with some other prayers. That the petitioner No.1 being respondent No.1 appeared in the aforesaid Arbitration Tribunal Case and contested it by adducing necessary documents in support of their case. That after hearing both the parties the Arbitration Tribunal was pleased to allow the Arbitration Case so far it relates to declaring the termination of the membership of the respondent Nos.5-8 are illegal and directed the present petitioner to restore their membership vide judgment and order dated 06.07.2022 against which the writ petition is filed.

Facts in substance of writ petition no.9102 of 2023 as stated by the petitioners are that they are respectively the General Secretary, Vice Chairman, Publicity Secretary and general Members of Bangladesh Grocery Business Association. The President of the Association on 01.06.2023 sent the names of the Petitioners as nominees of the Association to the General Body of FBCCI for two years term of 2023-2024 and 2024-2025. The Respondent No.4 also sent names of Respondent Nos.4-8 as the representatives of Bangladesh Grocery Business Association. Thereafter the Election Board of FBCCI on 11.06.2022 published names of the Petitioners in the preliminary Voter list against which

the Respondent No.4 filed an Appeal before the Election Appeal Board for excluding the names of the Petitioners from the preliminary Voter list and for including the names of the Respondent Nos. 4-8. The Appeal Board by its decision dated 22.06.2023 accepted the nominations submitted by the Respondent No.4 and against that decision the Petitioners filed Arbitration Case No. 09 of 2023 before Arbitration Tribunal. The Respondent Nos.4-8 contested the Case and after hearing, the Tribunal rejected the Arbitration Case by order dated 13.07.2023 against which this writ petition is filed.

The essence of facts of writ petition no.9103 of 2023 as stated by the petitioners are that Bangladesh Mobile Phone Recharge Baboshayee Association is a licensed trade organization and the petitioners are respectively the General Secretary, Vice Chairman, Publicity Secretary and general Members of the Association and their names have been sent to FBCCI by the President of the Association as its nominees to the General body of FBCCI for 2 years term of 2023-2024 and 2024-2025 to the Election Board of FBCCI while the Respondent No.4 send another set of names of the Respondent Nos.4-8 as representatives. The Election Board of FBCCI accepted the names of respondent nos.4-8 as valid. Against that decision the Petitioners preferred Appeal before the Election Appeal Board of FBCCI who by their decision dated 22.06.2023 rejected the appeal. Being aggrieved by that decision of Election Appeal Board the Petitioners filed Arbitration Case No.10 of 2023 before the FBCCI Arbitration Tribunal. After hearing, the Arbitration Tribunal by Order dated 13.07.2023 rejected the case against which the present writ petition is filed.

All the respondents who entered appearance univocally submitted that the present writ petitions are not maintainable and urged upon this Court to at first dispose of the question of maintainability of the writ

petitions. Therefore, issue before this Court is confined to a single question: whether writ petition is maintainable against any decision or award of the Arbitration Tribunal constituted under Section 20 of the Trade Organizations Act, 2022 read with the Trade Organizations (Arbitration Tribunal) Rules, 1981 and accordingly we heard only on the point of maintainability. For effective hearing and disposal of the issue in question this Court appointed Mr. Ahsanul Karim, Mr. Md. Salahuddin (Dolon), Mr. ABM Siddiquir Rahman Khan and Mr. Muhammad Mustafizur Rahman Khan, the learned Advocates to assist this Court as *amici curiae*.

Mr. AKM Badrudduza, Mr. Mokarramus Shaklan and Mr. HM Shanjid Siddique the learned advocates appearing for the writ petitioners made submissions which may summarised in the following paragraphs.

That Section 20 of the Trade Organizations Act, 2022 outlines provisions regarding the legal validity, actions, procedures and dispute resolution mechanisms for registered trade organizations, their executive committees, boards of directors, and related matters. It aims to provide a framework for internal dispute resolution while limiting the scope of litigation in courts by directing disputes to a specialized arbitration tribunal. Firstly, it encourages internal dispute resolution by prioritizing arbitration over court litigation, requiring disputes to be resolved through a trade organization's internal arbitration tribunal. This not only facilitates the efficient resolution of disputes within the framework of the trade body but also reduces the burden on courts. Secondly, the arbitration tribunal, constituted by the FBCCI with 3-5 members, ensures expertise in commercial and organizational issues, leading to informed decision-making tailored to the nature of trade disputes. Thirdly, the provision also restricts external legal proceedings, such as suits in civil courts, regarding trade organizations

unless the arbitration process has been exhausted, thereby safeguarding the autonomy of trade organizations and minimizing unnecessary external interference. Fourthly, the provision provides clarity in election-related disputes by explicitly delegating their resolution to the Election Board, Election Appeal Board and Arbitration Tribunal, ensuring minimal jurisdictional overlap and a clear procedural path for addressing such issues. Thus, the arbitration mechanism in Section 20 does confer exclusive jurisdiction over trade organization disputes.

That Rule 3 of the Trade Organizations (Arbitration Tribunal) Rules, 1981 offers several key strengths that contribute to the efficient functioning of the Arbitration Tribunal. The requirement for 3 to 5 members ensures a balanced decision-making body. The rule also ensures continuity in Tribunal operations by allowing the replacement of members who cannot fulfill their duties, preventing disruptions. By linking the Arbitration Tribunal to the Federation of Bangladesh Chambers of Commerce and Industry (hereinafter referred to as the FBCCI), it benefits from specialized expertise in resolving trade-related disputes. Moreover, the provision for Government control in determining the Tribunal's tenure in the absence of an Executive Committee ensures continuity and prevents administrative paralysis. Rule 4 outlines the procedure for referring disputes to the Arbitration Tribunal, including application requirements, fees, timelines and notification mechanisms. Rule 5 provides a procedural framework for the Arbitration Tribunal in handling references and disputes. It covers communication with parties, the presentation of evidence on oath, the Tribunal's decision-making process and the maintenance of records. Rule 6 facilitates the timeline for the disposal of arbitration references and the decision-making process within the Tribunal by majority

vote. Together, these provisions promote a fair, structured and effective arbitration process.

That the Arbitration Tribunal of the FBCCI is a creation of Statute as the persons are appointed by law. Section 20(2) mandates the constitution of an Arbitration Tribunal consist of 3 to 5 members, appointed by the FBCCI. Although the FBCCI, as a statutory licensed body by section 3 of the Trade Organizations Act, 2022, appoints the members, the appointments flows directly from the statute i.e Section 20 of the Act. Here, appointment is a statutory function specifically empowered by the Act. Therefore, a person is considered "appointed by the law" if his appointment is explicitly required or regulated by a statute or law. Section 20 directs for the formation of the Tribunal by the FBCCI limits the discretion of the FBCCI to appoint members within the statutory framework, ensuring the Tribunal functions within the confines of the law. Thus, the members are not appointed solely based on the FBCCI's internal regulations but under a statutory obligation imposed by Section 20. Secondly, the Tribunal exercises quasi-judicial powers to resolve disputes concerning the validity or propriety of trade organizations' actions, elections, or appointments, playing a crucial role in maintaining their governance. Empowered by Section 20 and Rule 3, the Tribunal's members function as public authorities, discharging duties mandated by the statute to ensure compliance and accountability within trade organizations. Thirdly, since the Tribunal's decisions directly affect the rights of parties and trade organizations, members act in a capacity that is more than private. Their actions are subject to principle of natural justice and statutory obligations. Finally, Section 20 mandates that disputes concerning trade organizations validity, elections, or proceedings must be resolved by an Arbitration Tribunal appointed by the FBCCI, thereby

providing statutory authority for such appointments. The Tribunal performs quasi-judicial functions by resolving disputes with significant implications for trade governance, issuing binding decisions subject to limited judicial review. Despite being appointed by a private body, as per mandate of law, the Tribunal operates under a statutory mandate, ensuring procedural fairness and impartiality. The FBCCI acts under delegated legislative authority in appointing members, highlighting their status as persons appointed by law and as required by law. Additionally, the absence of alternative dispute mechanisms underscores the Tribunal's statutory foundation and reinforces the legal status of its members. Thus, members of the Arbitration Tribunal meet the criteria of "persons appointed by law" due to the statutory directive, their quasi-judicial role, and the binding nature of their decisions. This Arbitration is a dispute resolution mechanism established by specific legislation. These bodies operate within the framework of statutory law and should undeniably be termed as "Creation of Statute" and "Persons appointed by Law".

That the FBCCI becomes a "Local Authority" when it appoints Arbitrator for the purpose of Section 20 of the Act, 2022. Section 3(28) of the General Clauses Act, 1897 defined the phrase "Local Authority". The definition is expansive and broad, encompassing not just traditional local bodies like municipalities and union councils but also specialized and government-established authorities. This helps ensure that all entities responsible for local governance, service provision, and resource management are captured by the term "Local Authority." The reference to "any corporation or other body or authority constituted or established by the Government under any law" gives the provision flexibility to accommodate new local authorities that may be created by the government in the future. This

ensures that the legal framework remains relevant even as the structure of local governance evolves. To become a "local authority" the phrase "other authority legally entitled to" is used to refer such entities that may not be explicitly listed in the preceding categories (such as municipal corporations, district boards, or union councils) but are still considered "local authorities" because they have been granted specific legal powers or responsibilities by the government or by or under any law. The phrase "legally entitled" indicates that the authority in question derives its power or jurisdiction through a legal framework usually through laws, regulations, or government orders. This ensures that anybody referred to as "other authority" is not arbitrary but is empowered by law. It cannot simply be any organization or body, it must have been formally granted the legal right to act by law. Here, the entitlement can come from statutes, government orders, or legal mandates, meaning that the entity must have been created or delegated specific powers by the State, often with a legal basis or statutory backing. This emphasizes that the entity is granted specific rights or responsibilities. Such as section 20 of the Act, 2022 specifically mandates the FBCCI to appoint Arbitrator with the statutory prescription. Here the FBCCI and Arbitration Tribunal get its authority from the Statute itself, not by any contract or from any private party. It is a statutory dispensation of functions. FBCCI gets legal statutory power to appoint arbitrators. On the other hand, the Arbitration Tribunal gets legal statutory power to arbitrate the dispute as per section 20 of the Act, 2022 and the Rules, 1981.

That the phrase "authority constituted or established by the Government under any law" in the section is also integral to the understanding of what qualifies as a "local authority." The term "authority" refers to a body,

organization, or entity that is granted specific powers and responsibilities by the Statute. It encompasses both governmental and quasi-governmental organizations tasked with managing or controlling various affairs. These entities are authorized to make decisions, implement policies, and execute responsibilities related to governance or administration of justice, ensuring the effective functioning of their designated roles within the broader framework of public service. The term "authority" fundamentally refers to the power or right to give orders, make decisions, and enforce obedience. It embodies a form of legitimate control granted by law, custom or agreement, serving as an abstract concept that enables entities to act within a defined framework. When applied to a "local authority," this aspect reflects the legal mandate given to the bodies to manage public affairs within a specific jurisdiction, enforce laws and regulations, and provide essential services such as education, dispute resolution and infrastructure development etc. In this context, authority represents the jurisdictional power exercised by a local body under the overarching legal framework of the State or Government. The phrase "constituted or established" highlights the formal process of creating an authority through constitutional provisions, legislation or executive orders. It signifies the deliberate formation of entities to fulfil specific purposes. This includes a wide range of bodies, from new local government organizations to task forces focused on particular projects or regulatory authorities tasked with overseeing specialized functions, ensuring structured and purpose-driven governance. The phrase "by the Government" establishes that the creation and empowerment of such authorities fall directly under the jurisdiction of the State. It underscores that only entities formally recognized and authorized by the Government are included, thereby excluding private or

voluntary organizations unless explicitly empowered by the State. This ensures that such authorities operate within a legal framework, maintaining a clear distinction between public and private entities in matters of governance. The phrase "under any law" broadens the scope by capturing entities created through a variety of legal mechanisms, including statutes, regulations and other legal instruments. The word 'law' here should imply both primary legislation, such as Acts of Parliament and secondary legislation, such as rules, regulations or executive notifications. The flexibility inherent in this phrase allows for the recognition of specialized authorities that may emerge to address specific needs. The provision allowing authorities to be established "by the Government under any law" offers flexibility in governance by accommodating a variety of local authorities designed to meet evolving needs. It ensures government control, maintaining alignment with national policies and accountability. Here the Arbitration Tribunal is formed not only under Section 20 but also by Rule 3 of the Rules, 1981. The formation of the Arbitration Tribunal under the Rule clearly demonstrates that the Tribunal operates "under the law," as mandated by the Government. It is constituted or established with the authority to settle disputes related to trade organizations. Thus finally, in all respects, the broad scope of this provision confirms that the Arbitration Tribunal qualifies as a "Local Authority" within the meaning of Section 3(28) of the General Clauses Act, 1897. Consequently, the Arbitration Tribunal is not a private body, and therefore, writ is maintainable against the decision of the Arbitration Tribunal i.e against the "Local Authority". The Arbitration Tribunal formed under section 20 of the Act is a "Local Authority" and the FBCCI is also a "Local Authority" only for the purpose of the appointment of Arbitrators as mandated by Law and Rules.

On the point of exclusion of jurisdiction of the civil court the petitioners submits that several laws established specific forums or mechanisms for resolving disputes, excluding the jurisdiction of other courts directly. Under the Public Procurement Act, 2006 (Sections 29, 30, and Rule 58), disputes arising from public procurement contracts must follow a hierarchical administrative review process, culminating in a Review Panel, with Section 29 and 30 and Rule 58 restricting court intervention during this process. Under the Bangladesh Energy Regulatory Commission Act, 2003 (Section 40), disputes between licensees or between licensees and consumers must be referred exclusively to the Bangladesh Energy Regulatory Commission (BERC) for resolution, overriding provisions in the Arbitration Act, 2001, or any other laws. Section 40 excludes court jurisdiction, ensuring that disputes in the energy sector are resolved solely by the Commission or arbitrators appointed by it, with the Commission's decisions deemed final and binding. BERC can act suo motu as an arbitrator or appoint arbitrators to resolve disputes, following procedures defined by regulations. The awards or orders issued by the Commission are enforceable as decrees of a civil court, providing an effective and conclusive alternative remedy. Likewise the Trade Organization Act, 2022 (Section 20 read with Rule 3) mandates arbitration for resolving disputes related to trade organizations, emphasizing alternative dispute resolution and excluding court jurisdiction. These frameworks aim to ensure specialized and streamlined dispute resolution, limiting judicial interference unless exceptional circumstances arise.

The next submission of the petitioners is that no efficacious or alternative forum remains after the award/decision of the Arbitration Tribunal. Once the Arbitration Tribunal passes its award/decision, no forum

remains for further appeal or review within the framework of the Act, 2022 or Rules, 1981. The Arbitration Tribunal's decisions, being final and binding under the relevant legal provisions, leave no scope for further administrative or judicial recourse except through Judicial review under Article 102 of the Constitution. As a statutory body constituted or established under the mandate of the Statute, the Arbitration Tribunal exercises quasi-judicial authority to settle disputes within the scope of its jurisdiction. Therefore, its awards carry the force of law and are subject to scrutiny through writ jurisdiction to ensure compliance with the principles of natural justice, legality and fairness. This reinforces that after the Tribunal's decision, writ jurisdiction is the only avenue to challenge its actions or decisions. Consequently, the writ petition is maintainable as there is no other forum available for addressing grievances arising from the Tribunal's award.

The petitioners finally submits that the Arbitration Tribunal, constituted by the FBCCI under the Act, 2022 and the Rules, 1981 clearly meets the criteria of being a "local authority" and operates as a "person appointed by law" as it required by the Statute. The Tribunal's formation is mandated by statutory provisions, and its members are appointed pursuant to a legal obligation set forth by the statute. The Tribunal exercises quasi-judicial functions, resolving disputes of significant public functions and binding effect, thereby carrying out statutory functions that serve to ensure the integrity of trade organizations in this jurisdiction. While it may be appointed by a body that is not a direct arm of the government but has a statutory back up, the statutory framework under which it operates establishes the Tribunal as an authoritative entity with legal legitimacy and accountability. As such the Arbitration Tribunal as a body

empowered by law, and, therefore, writ petitions against its decision are maintainable. The Tribunal, in the performance of its duties, functions within the legal framework and in accordance with the principles of justice and fairness, ensuring procedural integrity in dispute resolution.

Per contra, Mr. Imtiaz Moinul Islam, the learned advocate appearing for the respondent FBCCI submits that writ petition is not maintainable against an award passed by the FBCCI Arbitration Tribunal because a) FBCCI Arbitration Tribunal is not a person performing functions in connection with the affairs of the republic b) it is not a local authority, c) there is equally efficacious alternative remedy available and d) Writ Court is not a Court of Appeal where assessment/reassessment of evidence can be done and disputed questions of facts can be dealt with.

On the 1st point the learned advocate submitted that confusion may arise after cursory view of the cases of Datafin {[1987] 1 All ER 564}, Moulana Abdul Hakim [34 BLD 129], Accord [69 DLR 519] and Alliance [2019 ALR 302] that whether the Government has delegated its power of “constitution” to FBCCI under Rule 3 of Rules, 1981. It is extremely pertinent to note that what was delegated in all those above mentioned cases is the “function” not “constitution”. “Constitution by government” is not delegable, can never be delegated and there has never been, such delegation was attempted or approved. The misinterpretation of above cases has fueled the argument of the petitioners and their contention is that the judicial power of the government i.e function of the government has been delegated to FBCCI Tribunal and this private body is now a “de facto” public functionary being delegated by Ordinance, 1961 or Act, 2022 and the FBCCI Tribunal is a Tribunal as contemplated in the definition of “person” as

prescribed in Article 102(5) of the Constitution and therefore writ is maintainable against FBCCI Arbitration Tribunal. FBCCI Arbitration Tribunal was at first created in 1961 by section 12 of the Trade Organisation Ordinance, 1961. As per the above section the Arbitration Tribunal is constituted by the FBCCI which is a private body. This Tribunal is not a "Tribunal" as enumerated in Article 102(5) of the Constitution. The cases of Associated Cement Vs PN Sharma [AIR 1965 SC 1595], All Party Hill Vs Captain [AIR 1977 SC 2155] and Bangladesh Vs Mokaddas Ali [1981 BLD (AD) 378], all upheld that the "Tribunal", as contemplated in Article 136 of the Indian Constitution and in Article 102(5) of the Bangladesh Constitution, envisages an authority which is *ejusdem generis* to "Court" and have 2 criteria a) must have been constituted by State and 2) must have been invested with the inherent judicial power of the State. In the instant case whether there is delegation of "constitution" and/or "function" of state privilege or functions as seen in Datafin, Moulana Abdul Hakim, Accord and Alliance cases. The answer is a long and resounding "NO". Firstly, "constitution by state" can never be delegated and FBCCI Tribunal straight away falls through in this test and it is, by all consideration, a private tribunal. The next question is whether there is delegation of "public function" i.e judicial power to this private Tribunal. The answer is that there is no exclusive delegation, as seen in cases of Datafin or Accord or Alliance, of the public function of state. As we read section 20 of Act, 2022, it is clear that the inherent power of the state to adjudicate civil rights and liabilities which is vested in Civil Courts, are not at all exclusively delegated to FBCCI Tribunal as section 20 merely creates a pre-condition to prefer FBCCI arbitration before going for suit and other legal proceedings and at the same time, keeps the option to go with the same

complaint to Director General of Trade Organisations (DG). The cases reported in Ibrahim Cotton Mill Vs Chittagong Chamber of Commerce [51 DLR 538] and Shaikh Ansar Ali Vs Md. Tofazzal Hossain [55 DLR 211], all unambiguously found that the requirement to go to FBCCI Tribunal is a mere pre-condition and it does not oust the jurisdiction of Civil Court at all. The decision of Shaikh Ansar Ali reported in 55 DLR was challenged before the Appellate Division by filing CPLA No.122 of 2003 which was later non-prosecuted hence the said decision is still subsisting and governing this field. Evidently, FBCCI arbitration is not like Arbitration under Arbitration Acts (1940 Act or 2001 Act) where suit or other legal proceeding is exclusively barred and there is complete delegation to Arbitration Tribunals. However, even then the private tribunals created by law under Arbitration Act, 1940 or Salish Ain, 2001 are not amenable to writ jurisdiction simply for having alternative remedy against their awards/decisions in form of “setting aside applications (section 30 of 1940 Act and section 42 of 2001 Act)” and then “appeals”. In this instant issue, the confusion is arising simply because straight away, there seems to be no clear provision of “alternative remedy” or “appeal” against the award/decision of the FBCCI Arbitration Tribunal and the petitioners are desperate to take advantage of this apparent lacuna to bring the FBCCI Tribunal within writ jurisdiction. The legislature while promulgating the 1961 Ordinance, not only made Civil Court (under section 12 by inserting “unless”) and DTO (under section 9), the alternative forums to challenge any award or decision of the arbitration tribunal of FBCCI but also created another avenue to challenge the same by application of section 46 of the Arbitration Act, 1940. Therefore, when creating the FBCCI Arbitration Tribunal in 1961, the legislative intent was abundantly clear that it was being created as a private arbitration tribunal susceptible to a)

jurisdiction of Civil Court (section 12), b) to DTO (section 9) as well as c) to all the “setting aside (section 30)”, “appeal (section 39)” and “making award rule of Court/passing Judgment as per award (sections 14,15,16,17)” provisions of Arbitration Act, 1940.

The learned advocate on his 2nd point submits that the FBCCI Arbitration Tribunal is not a local authority. Section 3(28) of the General Clauses Act, 1897 has given a clear definition of “Local Authority” and there is no way to avoid or expand or interpret what is Local Authority other than the unambiguous language of the General Clauses Act. The first category includes authorities who control a municipal or local fund like the one seen in 16 DLR case of Zakir Hossain Vs Dhaka University where Dhaka University was found to be Local Authority because it controlled and managed local fund. FBCCI Arbitration Tribunal is neither funded by government nor it controls any municipal or local fund hence it is not Local Authority under this category. The second category is a body or authority a) constituted or established by government and b) under any law. These 2 criteria have to be satisfied to be a Local Authority for this category. The 3 decisions in Writ Petition No. 3708 of 2017, in Writ Petition No. 4355 of 2022 and in Writ Petitions No. 18477/2017 and 13183/2019, all found that even though FBCCI Arbitration Tribunal has been constituted under law i.e section 12 of Trade Organisation Ordinance, 1961 (corresponding to section 20 of Act, 2022) and rule 3 of Arbitration Tribunal Rules, 1981 but the said Tribunal has not been constituted by the government. Since it is constituted by the private body, FBCCI, hence the second criterion is not met as such FBCCI Arbitration Tribunal is not a Local Authority.

On his 3rd point regarding the equally efficacious alternative remedy, the learned advocate submits that from the above-mentioned decisions passed in 51 DLR 538 and 55

DLR 211, that there were as many as 3 alternative forums available to take recourse against an award/decision passed by FBCCI Arbitration Tribunal under Ordinance, 1961. The Arbitration act, 1940 is not in effect anymore but that does not convert FBCCI Arbitration Tribunal, created as an exclusively private tribunal, to a statutory tribunal as according to the new Trade Organisations Act, 2022 there still remains 2 equally efficacious alternative forum i.e the Civil Court and Director General of Trade Organisations (DG) to take recourse upon an award/decision passed by FBCCI Tribunal. In fact, the legislature took the effort to widen the power of DG in section 15 of the Trade Organisations Act, 2022 and also added a special proviso in section 20 of the Act in order to lead a person aggrieved by any award/decision of FBCCI Tribunal to their next course of action. The proviso clearly states that without FBCCI Tribunal award no one can apply to DG implying that with award one will go to DG. The DG has been regularly exercising his statutory power to stay or delay or appoint administrator in election disputes and most importantly, the new enactment, intentionally added “অথবা পর্যবেক্ষণ ও তদারকি করিবার নিমিত্ত অন্য যে কোনো প্রয়োজনীয় ব্যবস্থা গ্রহণ করিতে পারিবেন” in section 15 (gha), which was not existing in previous section 9 (2) (d) of the old Ordinance. the legislature went on to add 2 more wider powers in section 15 (tha) and (dha) to give all-encompassing power to DG therefore there remains no scope that DG is not an equally efficacious alternative remedy. In fact, DG may be an even more efficacious remedy than writ jurisdiction as the aggrieved parties get remedy within few months but a writ usually takes longer time to be finally disposed off. This is the conclusively proven fastest remedy for the parties but the petitioners are, for reason best known to them, is consistently pursuing one Court after another to open a flood gate, make the forum of DG ineffective and overburden

the Constitutional Courts with unnecessary writ petitions. In addition, under section 9 of the CPC, the Civil Court is always there with the widest jurisdiction as an equally efficacious alternative remedy.

On his 4th and final point the learned advocate for the FBCCI submits that the the petitioners contention that FBCCI Arbitration Tribunal is a “person performing functions in connection with the affairs of the republic” relying on the principle introduced by the landmark case of Datafin. However, even the case of Datafin did not hold that writ is maintainable, as being public functionary is not the only criteria to hold an action of someone amenable to writ jurisdiction. In that case it was clearly spelled out that Writ Court is not a Court of Appeal assessing or reassessing evidence. Each and every single award/decision of FBCCI Tribunal requires dealing with mix questions of law and fact as such writ is never the forum. That is why the DG has been made an alternative who calls for hearings, takes evidence and then as the second forum of facts, decides on the issue. The Appellate Division unequivocally ruled in Government of Bangladesh Vs Mrs. Rowshan Ara 17 BLT (AD) 65 that Writ Court is not a Court of Appeal reevaluating findings of facts of an inferior tribunal.

Mr. Md. Ekramul Hoque, the learned advocate appearing for the respondent No.4 in writ petition no.9103 of 2023 made similar submissions of FBCCI and further submittted that the instant writ petition is not maintainable since the same having been filed against some private individuals, not against any Government or Statutory Authority and as such writ jurisdiction under Article 102 of the constitution is not amenable and considering the same the Rule is liable to be discharged. The FBCCI Arbitration Tribunal is not performing any function in connection with the affairs of the Republic or of any Local Authority, the Tribunal is not constituted by

any statute or Rules, rather the same has been constituted in light of the Rules, 1981 and as per provision of Rule-3 of the said rules the members of the Tribunal have been appointed by the FBCCI, which is a private body and the Chairman and Members of the Tribunal are not also in the service of the Republic or of a Local Authority. The Government has not constituted the FBCCI Tribunal itself, rather the same has been constituted by the private persons, following the provision of the the Rules, 1981 and since the FBCCI Tribunal is neither performing any function of the Republic of Local Authority or any statutory body nor it is constituted by the Government and as it is not a Local Authority and thus the writ petition is not maintainable. The ratio has already been decided in an unreported case of Md. Erfan Ali vs. FBCCI Tribunal and others (Writ Petition No. 3708 of 2017) observing that the writ petition is not maintainable against which Md. Erfan Ali preferred CPLA No. 3841 of 2017 which was dismissed for default on 10th December 2020 and the restoration application was also rejected vide order dated 08.08.2022 and thus the decision passed in WP No.3708 of 2017 was upheld and relying upon the aforesaid decision another Bench of the High Court Division has been pleased to discharge the Rule of Writ Petition No.4335 of 2021 vide judgement and order dated 02.05.2021 holding that the writ petition is not maintainable.

Mr. Ahsanul Karim, the learned advocate as amicus curiae submits that FBCCI is incorporated under the Companies Act, 1913 and is a trade organisation registered under Trade Organisation Ordinance, 1961. It has its own Memorandum and Articles of Association by which it is governed. The bone contention of his submission, on the issue whether writ is maintainable against the order passed by the Arbitration Tribunal, is that Writ of certiorari, mandamus and prohibition lies against any person performing

functions in connection with the affairs of the Republic or of a local authority and not against a private individual body. Under Article 102(2)(a)(ii) order can be passed against any authority irrespective of nature of the function, if he is performing the function in connection with the affairs of Republic or any local authority. The term 'local authority' implies a public duty authorized by law or by any government to carry on some administrative functions. What is a local authority has been defined in section 3(28) of General Clauses Act, 1897. Whether a company being body corporate can be regarded as a local authority has been negated by the Apex Court in the case of *Khurshed Alam Vs Azizur Rahman* [2 ADC 80] and a company incorporated under the Companies Act is also not a local authority within the meaning of section 3(28) of General Clauses Act [4 MLR (AD) 347]. The core principle is that a company has not been established or created by the Government under any Act or statute and as such it was not a local authority. Writ petition also does not lie against a public functionary in respect of functions performed not in connection with the Republic or a local authority but in his private capacity [1995 BLD 124]. In the case of *MH Chowdhury Vs Titas Gas Transmission and Distribution Company Ltd.* [1981 BLD (AD) 61] the Apex Court decided whether the writ petition is maintainable or not depends on existence of corporate character of the company. If it is found that the company is not being run strictly according to the Articles of Association of the company and is subject to considerable control of the government or statutory corporation, it will be treated as instrumentality of the government or statutory corporation and writ petition will lie, otherwise no writ petition will lie against such a company. A special Bench of the High Court Division in the case of *Arif Sultan Vs DESA* [60 DLR 431] held that in order to determine whether a company is

instrumentality or agency of the government the following conditions would determine whether company is an instrumentality or agency of the government or local authority so that writ petition against it would be maintainable: 1) if the entire share capital of the company is held by the government, it will go a long way towards indicating that the company is an instrumentality or agency of the government, 2) existence of deep and extensive control of the government, 3) the true rationale in setting up the company, 4) the company is fully dependent on the financial assistance of the government, 5) the company is not run by its memorandum and articles of association.

Mr. Karim then submits that section 20 of the Trade Organizations Act, 2022 (corresponding to now repealed section 12 of the Trade Organizations Ordinance, 1961) does not limit or exclude suit against an order passed by the Arbitral Tribunal of a trade organization of FBCCI or completely oust the jurisdiction of the court [51 DLR 538]. Before coming to the court the aggrieved party is to refer the matter to Arbitration as provided in section 20 of the Act of 2022. Therefore, against the order passed by the Tribunal a suit is quite maintainable in the appropriate court having jurisdiction on the matter. The only requirement of law is that the aggrieved person must exhaust his remedies by way of reference to an arbitration tribunal before invoking the aid of the civil court (55 DLR 211).

Mr. Karim lastly submits that the Principle that Judicial Review is extended in UK to private bodies exercising public functions emanates from R Vs Panel on Take-over and Merger (1987) 1 All ER 564 popularly known as Datafin case wherein it is held that Judicial Review is maintainable against private decision making body performing public and administrative functions but in Bangladesh which has a written constitution does not allow

judicial review under Article 102(2) of the Constitution when a private body discharges public function. The FBCCI not being an instrumentality of the Government and it being governed by its Articles of Association writ is not maintainable against the Arbitration Tribunal of FBCCI and as such the present writ petition is misconceived and not maintainable. The appropriate remedy lies in instituting a suit before the court of competent jurisdiction and the petitioners may, if so advised, pursue the matter by filing a civil suit.

Mr. ABM Siddiquir Rahman Khan, the learned advocate as amicus curiae submits that to answer the common question of law involves in these writ petitions whether writ lies against the award passed by the Arbitration Tribunal constituted under section 20 of the Trade Organizations Act, 2022 ("2022 Act") read with Rule 3 of the Trade Organizations (Arbitration Tribunal) Rules, 1981, at first we may look into the source of power and in the present case the source of creation of the Arbitration Tribunal is section 20 of the 2022 Act and their functions and procedures have been prescribed in the Arbitration Tribunal Rules created in exercise of powers conferred by the Parent Act. In other words, this Arbitration Tribunal is a creation of the Statute, a public body. Section 20(2) of the 2022 Act provides that members of the tribunal under section 20(1) of the Act shall be appointed by the FBCCI. The statute in clear terms mandates that who are the electorates of the members of the Tribunal; it does not make the statutory tribunal a private body or tribunal of a private body, its statutory character will not be changed. For example, people elected their representative under the law, but the elected representative becomes public body who is amenable to judicial enquiry in writ jurisdiction. Now the question is whether the acts done i.e award passed by this tribunal is amenable to writ jurisdiction. Article 102

of the Constitution deals with this issue. Under the Article, it lies to 'declare any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect.' Article 102(5) defines or clarifies person used in article 102 and says "person" includes a statutory public authority and any Court or Tribunal, other than a court or tribunal established under a law relating to the defence service of Bangladesh or a tribunal to which Article 117 applies. It is therefore clear that person against whom writ lies includes Tribunal. In the present case Arbitration Tribunal setup under section 20 of 2022 Act and under rule 3 of the Arbitration Tribunal Rules and it is obvious that court or tribunal performs functions in connection with the affairs of the republic since it resolves disputes among the contesting parties and for that purpose Parliament by enacting statute established the Arbitration Tribunal.

Mr. Khan then submits that there are some cases, for example, Zakir Hossain Munshi Vs Bangladesh [55 DLR 130] where writ was held maintainable against private person, i.e Grameen Phone considering that the said body exercising public law functions as agent of the Government. In the cases of Mawlana Abdul Hakim [34 BLD 129], Liberty Vs Accord [69 DLR 519] and BHIS Vs Alliance [2019 ALR 302] several Division Benches of this Court held actions and decisions of ostensible private bodies but which nevertheless operate in public domain, or public functionary and/or government instrumentality writ is maintainable applying the English principle established in Datafin case {[1987] 1 All ER 564]} wherein nature of function being exercised by the body is determinative of maintainability not the source of power approach. The present arbitration tribunal is exercising public functions

of dispute settlement. Furthermore, its source of power lies in the statute i.e section 20 of Act 2022 read with the Arbitration Tribunal Rules, 1981. Therefore, jurisprudentially writ should lie against Arbitration Tribunal set up under section 20 of Act 2022 at least on three grounds: *corum non judice*, without jurisdiction and malice in law against the action of the public body i.e arbitration tribunal.

As regards equally efficacious remedy Mr. Khan submitted that Act 2022 does not provide any provision in relation to the award given under section 20 except the proviso of section 20. Considering the scheme of resolution by arbitration and exclusion of jurisdiction of courts to entertain the dispute except engaging Arbitration clearly signifies that going back to civil court of the lowest tier cannot be equally efficacious and therefore recourse to writ jurisdiction is the only option. The cases of 48 DLR (AD) 121 and 60 DLR (AD) 12 are distinguished since those two bodies do not fall within the definition of local authority but in the present case the Tribunal being a person performing function in connection with affairs of the republic.

We have heard the learned advocates of all the parties and the *amici curiae*. It has already been mentioned that in these rules *nisi* we are only dealing with the question of maintainability of the writ petitions filed against the decisions/awards of the Arbitration Tribunal constituted by the FBCCI under section 20 of the Trade Organizations Act, 2022 (formerly Trade Organizations Ordinance, 1961) read with rule 3 of the Trade Organizations (Arbitration Tribunal) Rules, 1981.

Before delving into the detailed on the question of maintainability of the writ petition, it is necessary to sketch out the relevant laws and rules that particularly govern the position of the Arbitration Tribunal formed

under the Trade Organizations Act, 2022 (hereinafter referred to as the Act, 2022) and the provisions of the Trade Organizations (Arbitration Tribunal) Rules, 1981 (hereinafter referred to as the Rules, 1981).

Sections 15 of the Act, 2022 is reproduced below in verbatim: -

“১৫। (১) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা এই আইনের অধীন অর্পিত কার্যসমূহ সম্পাদন করিবার জন্য ৪ [অন্যন যুগ্মসচিব] পদমর্যাদার একজন কর্মকর্তাকে মহাপরিচালক হিসাবে নিয়োগ প্রদান করিতে পারিবে।

(২) বাণিজ্য সংগঠনসমূহের কার্যাবলী মহাপরিচালকের নিয়ন্ত্রণাধীন থাকিবে এবং সময় সময়, মহাপরিচালক কর্তৃক বিধি দ্বারা নির্ধারিত পদ্ধতিতে উক্ত বাণিজ্য সংগঠনের কার্যাবলী পরিচালিত হইবে।

(৩) এই আইন বা আপাতত বলবৎ অন্য কোনো আইন বা বাণিজ্য সংগঠনের সংঘস্মারক বা সংঘবিধিতে যাহাই থাকুক না কেন, মহাপরিচালক-

(ক) অনুরূপ কোনো বাণিজ্য সংগঠন কিংবা এতদসংশ্লিষ্ট কোনো উপযুক্ত ব্যক্তিকে উক্ত বাণিজ্য সংগঠন সংশ্লিষ্ট কোনো তথ্য, দলিলপত্র, আয়-ব্যয়ের হিসাব, সদস্য তালিকা ও প্রতিবেদনসমূহ সরবরাহ করিবার জন্য কিংবা তৎসম্পর্কে কোনো জিজ্ঞাসার জবাব প্রদান করিবার জন্য নির্দেশ প্রদান করিতে পারিবেন;

(খ) কোনো বাণিজ্য সংগঠনের যে কোনো শাখা বা আঞ্চলিক বা উপ-আঞ্চলিক বা সার্কেল বা লিয়াজেঁ অফিস অথবা যেই সকল স্থানে কোনো রেকর্ডপত্র বা দলিলপত্র সংরক্ষণ করা হইয়াছে সেই সকল স্থান লিখিত পূর্ব নোটিশ প্রদানপূর্বক বা ব্যতিরেকে স্বয়ং বা তদকর্তৃক মনোনীত কোনো কর্মকর্তা পরিদর্শন করিতে পারিবেন;

(গ) কোনো বাণিজ্য সংগঠনের সাধারণ সভা, নির্বাহী কমিটি, পরিচালনা পর্ষদ বা অন্য যে কোনো কমিটির সভায় উপস্থিত থাকিতে পারিবেন অথবা কোনো কর্মকর্তাকে প্রতিনিধি হিসাবে প্রেরণ করিতে পারিবেন;

(ঘ) কোনো বাণিজ্য সংগঠন বা উহার আঞ্চলিক, উপ-আঞ্চলিক বা সার্কেলের কোনো নির্বাচন পর্যবেক্ষণ ও তদারকি করিতে পারিবেন বা

পর্যবেক্ষণ ও তদারকি করিবার জন্য কোনো কর্মকর্তাকে দায়িত্ব প্রদান করিতে পারিবেন অথবা পর্যবেক্ষণ ও তদারকি করিবার নিমিত্ত অন্য যে কোনো প্রয়োজনীয় ব্যবস্থা গ্রহণ করিতে পারিবেন;

(ঙ) কোনো বাণিজ্য সংগঠন বা উহার আঞ্চলিক, উপ-আঞ্চলিক বা সার্কুলের যে কোনো নির্বাচনের ফলাফল ঘোষণার ৩০ (ত্রিশ) দিনের মধ্যে সরকারের অনুমোদনক্রমে উক্ত নির্বাচনকে অকার্যকর বা বাতিল ঘোষণা অথবা পুনঃনির্বাচনের আদেশ প্রদান করিতে পারিবেন, যদি তিনি-

(অ) স্থায়ী জ্ঞাতসারে; বা

আ) প্রতিদ্বন্দ্বী কাহারও নিকট হইতে প্রাপ্ত কোনো অভিযোগ তদন্তের ভিত্তিতে; বা

(ই) উপ-দফা (অ) ও (আ) এর উদ্দেশ্য পূরণকল্পে দায়িত্বপ্রাপ্ত কোনো কর্মকর্তার তদন্ত প্রতিবেদনের ভিত্তিতে সন্তুষ্ট হন যে, উক্ত নির্বাচন পরিচালনায় সংঘটিত অনিয়ম উক্ত নির্বাচন বাতিলের যৌক্তিকতা প্রতিষ্ঠিত করে তাহা হইলে তিনি উক্ত আদেশে উল্লিখিত মেয়াদের মধ্যে নূতন নির্বাচন অনুষ্ঠানের নির্দেশ প্রদান করিতে পারিবেন;

(চ) নির্বাহী কমিটি, পরিচালনা পর্ষদ বা ক্ষেত্রমত, প্রশাসক কর্তৃক গৃহীত যে কোনো প্রস্তাব বা সিদ্ধান্ত বাতিল, স্থগিত বা পরিবর্তন করিতে পারিবেন, যদি তিনি এই মর্মে সন্তুষ্ট হন যে, উক্ত প্রস্তাব বা সিদ্ধান্ত এই আইন বা বিধির সহিত সঙ্গতিপূর্ণ নহে অথবা উক্ত প্রস্তাব বা সিদ্ধান্ত গ্রহণকালে সংঘস্মারক ও সংঘবিধি যথাযথভাবে প্রতিপালিত হয় নাই অথবা উক্ত প্রস্তাব বা সিদ্ধান্ত উক্ত বাণিজ্য সংগঠনের প্রতি সরকার বা মহাপরিচালক কর্তৃক জারিকৃত কোনো নির্দেশাবলী বা বিধির পরিপন্থি;

(ছ) তৎকর্তৃক দায়িত্বপ্রাপ্ত কোনো ব্যক্তির প্রতিবেদনের ভিত্তিতে কোনো বাণিজ্য সংগঠনের কার্যক্রম সুষ্ঠুভাবে পরিচালনার লক্ষ্যে প্রয়োজনীয় মনে করেন, তাহা হইলে-

(অ) উক্ত বাণিজ্য সংগঠনের নির্বাহী কমিটি বা পরিচালনা পর্ষদের এক বা একাধিক সদস্য বা পরিচালককে আত্মপক্ষ সমর্থনের সুযোগ প্রদান করিয়া অপসারণ করিতে পারিবেন; এবং

(আ) উক্ত কমিটির অবশিষ্ট মেয়াদের জন্য শূন্য পদ পূরণ করিতে বা পূরণ করিবার ব্যবস্থা গ্রহণ করিতে পারিবেন অথবা প্রশাসক

নিয়োগপূর্বক অবশিষ্ট মেয়াদের জন্য নির্বাচন অনুষ্ঠানের আদেশ প্রদান করিতে পারিবেন; বা

উক্ত বাণিজ্য সংগঠনের যেকোনো সদস্যকে আত্মপক্ষ সমর্থনের সুযোগ প্রদানপূর্বক নির্দিষ্ট মেয়াদের জন্য সাময়িকভাবে বরখাস্ত করিতে পারিবেন এবং অনুরূপভাবে সাময়িক বরখাস্তের আদেশ পুনঃবিবেচনা করিতে পারিবেন:

তবে শর্ত থাকে যে, সরকারের অনুমোদন ব্যতিরেকে এই উপ-দফার অধীনে অপসারণ বা সাময়িক বরখাস্ত বা শূন্যপদ পূরণ বা প্রশাসক নিয়োগ করা যাইবে না;

(জ) ফেডারেশন বা অন্য কোনো বাণিজ্য সংগঠনের সদস্যপদ লাভের জন্য নির্ধারিত শর্তাবলী পূরণ করা সত্ত্বেও

ফেডারেশন কর্তৃক কোনো বাণিজ্য সংগঠনের অথবা অন্য কোনো বাণিজ্য সংগঠন কর্তৃক কোনো ব্যক্তি, ব্যবসায়ী, ব্যবসা প্রতিষ্ঠান, অংশীদারি কারবার, কোম্পানি বা কোনো প্রতিষ্ঠানের সদস্যপদ প্রাপ্তির আবেদন প্রত্যাখান করা হইলে সংশ্লিষ্ট বাণিজ্য সংগঠন অথবা ব্যক্তি বা প্রতিষ্ঠানের আবেদনক্রমে ফেডারেশনকে বা উক্ত বাণিজ্য সংগঠনকে যথাক্রমে সংশ্লিষ্ট বাণিজ্য সংগঠনের অথবা সংশ্লিষ্ট ব্যক্তি, ব্যবসায়ী, ব্যবসা প্রতিষ্ঠান, অংশীদারি কারবার, কোম্পানি বা কোনো প্রতিষ্ঠানের অনুকূলে সদস্যপদ প্রদানের জন্য আদেশ প্রদান করিতে পারিবেন; কোনো বাণিজ্য সংগঠনে প্রশাসক নিযুক্ত হইলে তিনি উক্ত বাণিজ্য সংগঠনের আর্থিক সক্ষমতা ও কাজের পরিধি বিবেচনাপূর্বক উহার প্রশাসক ও সহায়ক কমিটির সদস্যগণের মাসিক সম্মানি ভাতা বা পারিশ্রমিক বা দায়িত্ব ভাতা বা আনুষঙ্গিক ব্যয় নির্ধারণ করিতে পারিবেন;

(ঞ) বাণিজ্য বা বিনিয়োগ বৃদ্ধির লক্ষ্যে কোনো পরামর্শ প্রদান করিতে পারিবেন;

(ট) সরকারি বা জনকল্যাণমূলক কোনো কার্যক্রমে অংশগ্রহণ বা সহযোগিতা প্রদান করিবার নির্দেশ প্রদান করিতে পারিবেন;

(ঠ) কোনো সদস্য বা ফেডারেশন বা ক্ষেত্রমত, জেলা বা মেট্রোপলিটন চেম্বারের অভিযোগ বা আবেদন অথবা স্বীয় বিবেচনায় কোনো বাণিজ্য সংগঠনে বিদ্যমান কোনো সমস্যা বা দ্বন্দ্ব নিরসনের উদ্যোগ গ্রহণ করিতে পারিবেন;

(ড) ব্যবসা, শিল্প, বাণিজ্য ও সেবাখাতসমূহে দেশের সার্বিক অর্থনৈতিক উন্নয়নের স্বার্থ সংরক্ষণের লক্ষ্যে বাণিজ্য সংগঠনসমূহের সহিত জাতীয় ও আন্তর্জাতিক বিভিন্ন সংস্থার যোগাযোগ ও কার্যক্রমের সমন্বয় সাধন করিবেন;

(ঢ) কোনো বাণিজ্য সংগঠন অথবা ফেডারেশনের আবেদন বা অভিযোগ অথবা স্থায়ী বিবেচনায় কোনো বাণিজ্য সংগঠনের সুষ্ঠু নির্বাচন অনুষ্ঠানের স্বার্থে নির্বাচন বোর্ড এবং নির্বাচন আপিল বোর্ড গঠন করিতে পারিবেন; এবং

(ণ) বিধি দ্বারা নির্ধারিত বা অন্য যে কোনো ক্ষমতা, দায়িত্ব ও কর্তব্য পালন করিবেন।

Section 20 of the Act, 2022 under which the Arbitration Tribunal is constituted reads under:

২০। (১) আপাতত বলবৎ অন্য কোনো আইন বা কোনো নিবন্ধিত বাণিজ্য সংগঠনের কোনো সংঘবিধি বা সংঘস্মারকে যাহা কিছুই থাকুক না কেন, অনুরূপ বাণিজ্য সংগঠন বা উহার নির্বাহী কমিটি বা পরিচালনা পর্ষদ বা উহার অন্যান্য সংস্থার বৈধতা বা উহার কোনো কার্য বা কার্যধারার যথার্থতা অথবা উহার গঠন বা উক্ত কমিটি বা পরিচালনা পর্ষদের বা সংস্থার নির্বাচন বা নিয়োগ সম্পর্কিত বিষয়ে অনুরূপ বাণিজ্য সংগঠনের কোনো সদস্য কর্তৃক বা উহার পক্ষে বা অন্য কোনো বাণিজ্য সংগঠনের কোনো সদস্য কর্তৃক কোনো প্রশ্ন উত্থাপিত হইলে, অনুরূপ বাণিজ্য সংগঠন বা উহার কোনো সদস্য বা অনুরূপ বাণিজ্য সংগঠনের নির্বাহী কমিটির বা পরিচালনা পর্ষদের কোনো সদস্যের বিরুদ্ধে কোনো মামলা দায়ের বা আইনগত কার্যক্রম গ্রহণ বা রুজু করা যাইবে না, যদি না উক্ত সদস্য বা অন্যান্য বাণিজ্য সংগঠন বিধি দ্বারা নির্ধারিত ফিসহ ফেডারেশন সংশ্লিষ্ট বিষয়ে সিদ্ধান্ত প্রদানের উদ্দেশ্যে গঠিত সালিশ ট্রাইব্যুনালের নিকট বিষয়টি নিষ্পত্তির আবেদন করে এবং অনুরূপ সালিশ ট্রাইব্যুনাল উক্ত বিষয়ে উহার সিদ্ধান্ত বা রোয়েদাদ প্রদান করে:

তবে শর্ত থাকে যে, কোনো বাণিজ্য সংগঠনের নির্বাহী কমিটি বা পরিচালনা পর্ষদ বা প্রশাসক কর্তৃক নির্বাচনের তপশিল ঘোষণা করা হইলে নির্বাচন সংক্রান্ত যে কোনো বিষয়ে গঠিত নির্বাচন বোর্ড বা নির্বাচন আপিল বোর্ড বা সালিশ ট্রাইব্যুনালের সিদ্ধান্ত বা রোয়েদাদ ব্যতীত মহাপরিচালকের নিকট এই বিষয়ে কোনো আবেদন বা অভিযোগ করা যাইবে না।

(২) উপ-ধারা (১) এ উল্লিখিত সালিশ ট্রাইব্যুনাল ফেডারেশন অব চেম্বার্স অব কমার্স এণ্ড ইন্ডাস্ট্রিজ কর্তৃক নিয়োগপ্রাপ্ত অনূ্যন ৩ (তিন) বা অনধিক ৫ (পাঁচ) জন সদস্য সমন্বয়ে গঠিত হইবে এবং উক্ত ট্রাইব্যুনাল বিধি দ্বারা নির্ধারিত পদ্ধতিতে কার্যক্রম পরিচালনা এবং সিদ্ধান্ত বা রোয়েদাদ প্রদান করিবে।

Section 12 of the Trade Organizations Ordinance, 1961 (now repealed) under which earlier Arbitration Tribunal was constituted which more or less similar to section 20 of Act, 2022 runs as follows:

“12. Restriction on suits against trade organisations:

1) Notwithstanding anything contained in any law for the time being in force or in the articles or memorandum of a registered trade organization, no suit or other legal proceedings shall be instituted or commenced against such registered trade organization or any member thereof or any member of the Executive Committee of such trade organization questioning the validity or propriety of any act or proceeding of such trade organization or of the Executive Committee or other body thereof, or the constitution of, or election or appointment to, such Committee or body, by any member of such trade organization or by, or by any member of, any other trade organization unless such member or other trade organization has made an application, accompanied by such fee not less than one thousand taka as may be prescribed by rules, referring the matter to the Arbitration Tribunal constituted for the purpose of deciding such references by the Federation of Chambers of Commerce and Industry registered under the Act in pursuance of a licence and such Arbitration Tribunal has given its decision or award thereon.

(2) The Arbitration Tribunal constituted under subsection (1) shall consist of not less than three and not more than five members appointed by the said Federation of Chambers of Commerce and Industry and shall conduct its proceedings and give its decision or award in accordance with the rules made in this behalf.

(3) Nothing in this section shall affect any suit or other legal proceedings instituted or commenced before the commencement of this Ordinance.”

The Trade Organizations (Arbitration Tribunal) Rules, 1981 was framed by the Government under S.R.O. 388-L/81 in exercise of the powers conferred by Section 23 of the Trade Organizations Ordinance, 1961 (XLV of 1961), read with Section 12 thereof. Although the said Ordinance, 1961 has been repealed by the Trade Organizations Act, 2022 (Act No.9 of 2022), Section 32 of the new Act of 2022 provides that the Trade Organizations (Arbitration Tribunal) Rules, 1981 remain valid and applicable in the present case.

Rules 3-6 of the Trade Organizations (Arbitration Tribunal) Rules, 1981 read as under:

Rule-3. Constitution of the Tribunal, etc.-

(1) The Federation shall, for the purpose of examining any reference made by any member of a trade organisation or by, or by any member of, any other trade organisation questioning the validity or propriety of any act or proceeding of such trade organisation or of the Executive Committee or other body thereof, or the constitution of, or election or appointment to such Committee or body, constitute an Arbitration Tribunal which shall consist of not less than three and not more than five members to be appointed by it.

(2) The Federation shall appoint one of the members of the Tribunal to be the Chairman of the Tribunal. The Secretary-General of the Federation shall act as the Secretary of the Tribunal.

(3) The tenure of the Tribunal shall be the same as that of the Executive Committee of the Federation, and if, at any time, there be no Executive Committee of the Federation, the tenure of the Tribunal shall be such as the Government may determine.

(4) If a member of the Tribunal dies or neglects or refuses to act, or is, for any reason, unable to act, as a member of the Tribunal, the Federation shall appoint some other person in his place and the person so appointed shall act as a member of the Tribunal for the unspent period of the term of office of the member in whose place he has been appointed.

Rule 4. Application to the Tribunal-

(1) An application under section 12 of the Ordinance, referring a question relating to the validity or propriety of any act or proceeding of a registered trade organisation, or of the Executive Committee or body thereof, or the constitution of, or election or appointment to, such Committee or body, shall be made to the Secretary to the Tribunal and shall be accompanied by a fee of six thousand Taka payable by pay order or bank draft in favour of the Secretary of the Tribunal.

(2) An application made under sub-rule (1) shall be duly signed by the applicant and shall contain the full address of the applicant, specifying the points of dispute calling for arbitration.

(3) Upon receipt of an application under sub-rule (1), the Secretary of the Tribunal shall, with the approval of the Chairman, convene a meeting of the Tribunal within fifteen days of the receipt of the application and shall, by notice in writing to be issued within seven days of the receipt of the application, require the applicant, respondent and any other person whose attendance may be necessary in connection with the arbitration to attend the meeting.

(4) A notice under sub-rule (3) issued by a special messenger or, by registered post, shall be deemed to have duly issued.

Rule 5. Procedure to be followed by the Tribunal-

(1) The Tribunal shall inform the applicant, the respondent and other persons concerned of the place and time of the

meeting of the Tribunal and of such procedure relating to the appearance of the parties to the reference and their lawyers as it may consider necessary. The Tribunal may also issue, from time to time, such instructions to the parties to the reference as it deems fit.

(2) The parties to the reference may appear either in person or by their authorized agents or through their lawyers and may produce such evidence as they desire to adduce in support of their respective cases and which the Tribunal considers to be relevant and necessary for the purpose of arriving at a decision or making an award.

(3) The parties to the reference shall submit to be examined by the Tribunal on oath or affirmation in relation to the matters in dispute and shall produce before the Tribunal all such books, papers, and other documents and records within their possession or power as may be required or called for, and do all other things the doing of which may, during the proceedings on the reference, be required, by the Tribunal.

(4) The Tribunal shall keep a record of the proceedings, but such records need not be a verbatim record.

(5) Every party to a reference shall do all such acts as may be necessary to enable the Tribunal to arrive at a decision or to make just award and shall not willfully do or cause or allow to be done any act or thing which may prevent the Tribunal from arriving at a decision or making an award on the reference or delay the arrival at such decision or making such award.

(6) The Tribunal shall sign a decision or award to be given by it and shall give a notice to that effect to the practice to the reference. The Tribunal shall supply, on demand, a copy of the decision or award to each party to the reference.

Rule 6. Disposal of the reference, etc.-

(1) An application under sub-rule (1) of rule 4 making a reference for arbitration shall be disposed of within three months of the first meeting of the Tribunal held in connection with the arbitration thereof.

(2) A decision or award to be given by the Tribunal shall be arrived at or made by the votes of the majority of its members present.

By referring the above provisions of laws the petitioners argued that the Arbitration Tribunal constituted by the FBCCI is a creation of Statute as the members of the Tribunal are appointed as per Section 20(2) of the Act, 2022 read with Rule 3 of the Rules, 1981 which mandates the constitution of an Arbitration Tribunal consist of 3 to 5 members, appointed by the FBCCI. According to the petitioners although the FBCCI, as a statutory licensed body by Section 3 of the Act, 2022, appoints the members of the Arbitration Tribunal but the appointments flows directly from the statute which is a statutory function specifically empowered by the Act and this appointment is made within the statutory framework and therefore, a person is considered "appointed by the law" if his appointment is explicitly required or regulated by a statute or law.

The petitioners' further contention is that the Tribunal exercises quasi-judicial powers to resolve disputes concerning the validity or propriety of trade organizations' actions, elections etc and empowered by Section 20 and Rule 3, the Tribunal functions as public authority, discharging duties mandated by the statute to ensure compliance and accountability within trade organizations. Since the Tribunal's decisions having binding effect, subject to limited judicial review, directly affect the rights of parties and trade organizations, the Tribunal acts in a capacity that is more than private. Section 20 mandates that disputes concerning

trade organizations validity, elections, or proceedings must be resolved by an Arbitration Tribunal appointed by the FBCCI, thereby providing statutory authority for such appointments and without approaching the Tribunal the parties cannot take any legal recourse including civil court and as such despite being appointed by a private body, as per mandate of law, the Tribunal operates under a statutory mandate, ensuring procedural fairness and impartiality. In that view the FBCCI acts under delegated legislative authority in appointing members of the Tribunal, highlighting their status as persons appointed by law and as required by law.

In reply to those contentions the respondents argued that the government has not delegated the “constitution and/or establishment” of the Arbitration Tribunal to FBCCI under section 20(2) of the Act, 2022 read with rule 3 of Rules, 1981. “Constitution or establishment by government” is not delegable, can never be delegated and there has never been, such delegation was attempted or approved. The misinterpretation of cases of Datafin or Moulana Abdul Hakim or Accord or Alliance has fueled the argument of the petitioners contending that the judicial power of the government i.e function of the government has been delegated to FBCCI Tribunal and this private body is now a “de facto” public functionary which means the Tribunal is performing “public function” being delegated by the Act, 2022 and the FBCCI Tribunal is a Tribunal as contemplated in the definition of “person” as prescribed in Article 102(5) of the Constitution and therefore writ is maintainable against FBCCI Arbitration Tribunal which has no substance. FBCCI Arbitration Tribunal was at first created in 1961 by section 12 of the Trade Organisation Ordinance, 1961 by the FBCCI which is a private body. This Tribunal is not a “Tribunal” as enumerated in Article 102(5) of the Constitution. The cases of Associated Cement

Vs PN Sharma [AIR 1965 SC 1595], All Party Hill Vs Captain [AIR 1977 SC 2155] and Bangladesh Vs Mokaddas Ali [1981 BLD (AD) 378], all upheld that the “Tribunal”, as contemplated in Article 136 of the Indian Constitution and in Article 102(5) of the Bangladesh Constitution, envisages an authority which is *ejusdem generis* to “Court” and have 2 criteria a) must have been constituted by State and 2) must have been invested with the inherent judicial power of the State. The “constitution by State” can never be delegated and FBCCI Tribunal straight away falls through in this test and it is, by all consideration, a private tribunal. Whether there is delegation of “public function” i.e judicial power to this private Tribunal and the answer is that there is no exclusive delegation, as seen in cases of Datafin or Accord or Alliance, of the public function of the State. As we read section 20 of Act, 2022 it is clear that the inherent power of the State to adjudicate civil rights and liabilities which is vested in Civil Courts, are not at all exclusively delegated to FBCCI Tribunal as section 20 merely creates a pre-condition to prefer arbitration before going for suit and other legal proceedings and at the same time, keeps the option to go with the same Complaint to the Director General of Trade Organisations (DG) under section 15 of the Act, 2022. The whole contention of the petitioners that FBCCI Arbitration Tribunal is a “person performing functions in connection of the affairs of the republic” relying on the principle introduced by the landmark case of “Datafin” but public functionary is not the only criteria to hold an action of someone amenable to writ jurisdiction. In Datafin, it was clearly spelled out that Writ Court is not a Court of Appeal assessing or reassessing evidence.

At this stage let us see the legal development in this field in the light of some landmark decisions of home and abroad.

In the case of *Czarnikov Vs Roth Schmidt & Co* [1922] All ER Rep 45 Bankes LJ said: *“To release real and effective control over commercial arbitrations is to allow the arbitrator, or Arbitration Tribunal, to be a law unto himself, or themselves, to give him or them a free hand to decide according to law or not according to law as he or they think fit, in other words to be outside the law. At present no individual or association is, so far as I am aware, outside the law except a trade union. To put such associations as the Refined Sugar Association in a similar position would in my opinion be against the public policy. Unlimited power does not conduce to reasonableness of view or conduct.”* In the same case Scrutton LJ opined: *“in my view to allow English citizens to agree to exclude this safeguard for the administration of the law of the country to public policy. There must be no Alastia in England where the King’s writ does not run.”* In the same case Atkin LJ made remarkable observation in the following term: *“I think that it is still a principle of English law that an agreement to oust the jurisdiction of the Courts is invalid... The policy of the law has given to the High Court large powers over inferior Courts for the very purpose of maintaining a uniform standard of justice and one uniform system of law. ... If an agreement to oust the common law jurisdiction of the Court is invalid every reason appears to me to exist for holding that an agreement to oust the Court of this statutory jurisdiction is invalid.”*

In the case of *R Vs Criminal Injuries Compensation Board, Ex p Lain* [1967] 2 All ER 770 Lord Parker CJ, regarding the prerogative remedies of writ of certiorari observed: *“They have varied from time to time, being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining a lis inter partes. Later again it extended to cases where there was no*

lis in the strict sense of the word, but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that the body concerned was under a duty to act judicially and that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is from the agreement of the parties concerned. ... We have, as it seems to me, reached the position when the ambit of certiorari can be said to cover every case in which a body of persons, of a public as opposed to a purely private or domestic character, has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at this way the board in my judgment comes fairly and squarely within the jurisdiction of this court.” In the same case Diplock LJ, one of the most celebrated administrative law expert said: “The jurisdiction of the High Court ... to supervise to exercise of their jurisdiction by inferior tribunals has not in the past been dependent on the source of the tribunal’s authority to decide issues submitted to its determination, except where such authority is derived solely from agreement of parties to the determination. The latter case false within the field of private contract and thus within the ordinary civil jurisdiction ... under the Arbitration Acts. The earlier history of the writ of certiorari shows that it was issued to courts whose authority was derived from the prerogative, from royal charter, from franchise or custom, as well as from Act of Parliament. Its recent history shows that as new kinds of tribunals have been created, orders of certiorari have been extended to them too and to all persons who under authority of government have exercised quasi-judicial functions. True, since the victory of Parliament in the constitutional struggles of the seventeenth century, authority has been generally if not

invariably conferred on new kinds of tribunals by or under Act of Parliament and there has been no recent occasion for the High Court to exercise supervisory jurisdiction over persons whose ultimate authority to decide matters is derived from any other source. I see no other reason, however, for holding that the ancient jurisdiction of the court of Queen's Bench has been narrowed merely because there had been no occasion to exercise it. If new tribunals are established by acts of government, the supervisory jurisdiction of the High Court extends to them if they possess the essential characteristics on which the subjection of inferior tribunals to the supervisory control of the High Court is based. What are these characteristics? It is plain on the authorities that the tribunal need not be one whose determinations give rise directly to any legally enforceable right or liability. Its determination may be subject to certiorari notwithstanding that it is merely one step in a process which may have the result of altering the legal rights or liabilities of a person to whom it relates. It is not even essential that the determination must have that result, for there may be some subsequent condition to be satisfied before the determination can have any effect on such legal rights and liabilities. That subsequent condition may be a later determination by another tribunal. Is there any reason in principle why certiorari should not lie in respect of a determination where the subsequent condition which must be satisfied before it can affect any legal rights or liabilities of a person to whom it relates, is the exercise in favour of that person of an executive discretion as distinct from a discretion which is required to be exercised judicially?"

In the case of *Councils of Civil Service Unions Vs Minister for the Civil Service* [1984] 3 All ER 935 Diplock LJ, said: "For a decision to be susceptible to judicial

review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceeding paragraph. The ultimate source of decision-making power is nearly always nowadays a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law itself, ie that part of the common law that is given by lawyers the label of 'the prerogative'. Where this is the source of decision-making power, the power is confined to executive officers of central as distinct from local government and in conditional practice is generally exercised by those holding ministerial rank."

Discussing the above along with some other reported cases Sir John Donaldson MR, in the case of *R Vs Panel on take-overs* (popularly known as *Datafin case*) [1987] 1 All ER 564 observed: "In all the reports it is possible to find enumerations of factors giving rise to the jurisdiction, but it is a fatal error to regard the presence of all those factors as essential or as being exclusive of other factors. Possibly the only essential elements are what can be described as a public element, which can take many different forms, and the exclusion from the jurisdiction of bodies whose sole source of power is a consensual submission to its jurisdiction." His lordship however rejected the application and observed: "It is not for a court exercising a judicial review jurisdiction to substitute itself for the fact-finding tribunal, and error of law in the form of a finding of fact for which there was no evidence or in the form of a misconstruction of the

panel's own rules would normally be a matter to be dealt with by a declaratory judgment. The only circumstances in which I would anticipate the use of the remedies of certiorari and mandamus would be in the event, which I hope is unthinkable, of the panel acting in breach of the rules of natural justice, in other words, unfairly." His Lordship then gave his reasons for rejecting the application by saying: "The role of the court is wholly different. It is, in an appropriate case, to review the decision of the panel and to consider whether there has been 'illegality' ie whether the panel has misdirected itself in law, 'irrationality' ie whether the panel's decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it, or 'procedural impropriety' ie a departure by the panel from any procedural rules governing its conduct or a failure to observe the basic rules of natural justice, which is probably better described as 'fundamental unfairness', since justice in nature is conspicuous by its absence."

In the same case Lloyd LJ, rejected both the arguments (i) that the sole test whether the body of persons is subject to judicial review is the source of its power, and (ii) that there has been no case where that source has been other than legislation, including subordinate legislation, or the prerogative. In his lordship's language: "I do not agree that the source of the power is the sole test whether a body is subject to judicial review, nor do I so read Lord Diplock's speech (in Council of Civil Service Case). Of course the source of power will often, perhaps usually, be decisive. If the source of power is contractual, as in the case of private arbitration, then clearly the arbitrator is not subject to judicial review. But in between these extremes there is an area in which it is helpful to look not just at the source

of the power but at the nature of the power. If the body in question is exercising public law functions, or if the exercise of its functions have public law consequences, then that may, as the counsel for the applicant submitted, be sufficient to bring the body within the reach of judicial review.” His lordship concludes by saying: “So I would reject counsel for the panel’s argument that the sole test whether a body is subject to judicial review is the source of its power. ... The distinction must lie in the nature of the duty imposed, whether expressly or by implication. If the duty is a public duty, then the body in question is subject to public law. ... what I regard as the true view, that is not just the source of the power that matters, but also the nature of the duty. ... The express powers conferred on inferior tribunals were of critical importance in the early days when the sole or main ground for intervention by the courts was that the inferior tribunal had exceeded its powers. But those days are long since past. ... If in addition to looking at the source of the power we are entitled to look at the nature of the power, as I believe we are, then the case is all the stronger.”

In the case of *Vaish Degree College Vs. Lakshmi Narain* AIR 1976 (Supreme Court) 888 the question arose whether the executive committee of a private college which was affiliated to AR University (Agra) and the said college having agreed to be governed by the provisions of the University Act and the statute and the Ordinances made thereunder was a statutory body. The Indian Supreme Court held: *“It is, therefore, clear that there is a well-marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words, the position seems to be that the institution concerned must owe its very existence to a*

statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body”.

In the case of *Liberty Vs Accord Foundation and Others* [69 DLR 519] the Accord Foundation was a private forum created by European buyers of the Garment products who were supposed to certify Bangladeshi factory after inspection regarding its safety for manufacturing RMG goods. There is neither any Act of parliament nor any contract with Accord which governed the relationship between Accord and a factory like petitioner Liberty Fashion but the Accord has been refusing to inspect the petitioner's factory although Accord published the name of the petitioner's factory in its web site as non-compliant and risky causing buyers all over the world to refrain from placing orders for readymade garments to the petitioners factory. Referring the English Judgment [1987] 1 All ER 564 (supra) a Division Bench of the High Court Division held the Court is to see whether the impugned action has been performed in the public domain and if affirmative in that case the Court is likely to infer that the decision has been taken in connection with the affairs of the Republic. A government element may also appear where governmental functions are carried out by private bodies. The Division Bench found the Respondent No.1, Accord has been performing a public function and acting in the public domain and held the writ petition maintainable both under Article 102(1) and 102(2) as well as there was no other equally efficacious alternative remedy.

In the case of BHIS Vs Alliance and others [2019 ALR 302] the petitioner was a ready-made garment business company. The American buyers formed “Alliance” (respondent no. 1) for inspecting the RMG factories of Bangladesh. The Government of Bangladesh formed a National Tripartite Committee (NTC) with the owners of garment factories and all Bangladeshi labour organizations and adopted the National Tripartite Plan of Action (NTPA). The Government ratified Alliance actions through the NTPA. Thus the Alliance can stop any Bangladeshi factory business by reporting publicly the result of any such inspection. The petitioner being a company filed writ petition for enforcement of fundamental rights against private body like Alliance and others under Article 102(1) of our Constitution and a Division Bench of this Court held that the ambit of Article 102(1) of the Constitution is very wide. Referring the jurisprudential development in this jurisdiction through the cases like Zakir Hossain Munshi Vs Government, 55 DLR 130; Farzana Moazzem Vs Securities and Exchange Commission and others, 54 DLR 66 and Conforce Limited Vs Titas Gas Transmission and Distribution Company Limited & others, 42 DLR 33, Moulana Abdul Hakim Vs Government of Bangladesh and others, 34 BLD 129 the Division Bench held that it is now well-settled that the functional test approach enables a judicial review of an ostensibly private body, but which nevertheless performs a public function that aims at benefiting the public at large and some of the public functions are being discharged by the Alliance on being recognized by the Government and its instrumentalities and agencies. The Division Bench further observed that there is no gainsaying the fact that the respondent no.1 (Alliance) is basically a private platform/body set up by the American buyers and this respondent no. 1 has been operating in Bangladesh with the approval of the Government of Bangladesh. To be precise,

there is a public element in the functions that are being discharged by the respondent no. 1 (Alliance). As a matter of fact, under our Constitutional scheme, an aggrieved person, in order to agitate his claim/case in judicial review, can do so by invoking Article 102(1) and/or Article 102(2) depending on the nature of the grievance and status of the perpetrator. Article 102(1) comes into play in relation to the infringement of any of the fundamental rights guaranteed under Part III of the Constitution. Article 102(2) presupposes the availability of various writs that may be resorted to for review of actions and operations in the public domain, such actions and operations being otherwise the preserve of the Executive organ of the State affecting the citizenry in their contacts and dealings with the Executive and its functionaries. The division bench maintained the writ petition.

In the case of *Moulana Abdul Hakim Vs Government of Bangladesh and others* [34 BLD 129] a teacher dismissed by the Chairman of a private Madrasa Committee from employment under charge of misconduct filed writ petition challenging the dismissal order. A division bench of this Court referring *Datafin* case in our constitutional perspective observed that *what can, however, be asserted with certainty is that the question of whether an activity has sufficient public element to it is quite properly a matter of fact and degree ascertainable from a consideration of each given case on its merits. But it is nevertheless indisputably well-established by now, and as held by the Privy Council in Jeewan Mohit Vs the Director of Public Prosecutions of Mauritius reported in (2006) UKPC 20 that the principle enunciated in Datafin is invariably the effective law, or rather the “invariable rule” entrenched in judicial psyche. That matter of “fact and degree” being a determinant of the public element of any ostensible private authority’s*

operational ambit has struck a chord with this Court in delving into the facts and issues raised in this Writ Petition. In that regard, this Court has had to examine the extent of the Madrasah Managing Committee Chairman's capacity to affect the rights and interests of the affected Petitioner. Also examined has been such authority's capacity to so act being inextricably enmeshed in a complex regulatory regime that links it to a higher authority that is a creature of statute and resultantly is a repository of statutory powers including that of oversight to the extent of overturning, ratifying or confirming decisions emanating from such Chairman. It is in that sense that the Impugned Order in this Court's view may easily acquire, and as viewed purely from the Datafin perspective, a hybrid character in that being issued by the Respondent No.10 in his capacity as Chairman, Madrasah Managing Committee the Order is clearly meant to operate in the public domain. ... It is not disputed by either party that both the Committee and the Board exercise and discharge statutory authority in the public domain and in their capacities as instrumentalities of the State. By that reason alone clearly, and applying the Datafin test, therefore, the action of the respondent no.10 falls equally to be reviewed under Article 102(2) of the Constitution. This decision has been challenged before the Supreme Court, Appellate Division and leave was granted in CPLA no.3378 of 2014 and the Appellate Division stayed the operation of the said Judgment on 15.03.2015 till disposal of the appeal which is still pending and we were informed that the matter is in the list as heard in part.

In the present case there is no dispute that the Arbitration Tribunals were earlier constituted following the provision of section 12 of the Trade Organizations Ordinance, 1961 and now it is being constituted following the provision of section 20 of the Trade Organizations Act,

2022 read with rule-3 of the Trade Organizations (Arbitration Tribunal) Rules, 1981.

In the light of legal position so far developed in our country how far the two fold arguments of the petitioners that (i) although the FBCCI, as a statutory licensed body appoints the members of the Arbitration Tribunal but the appointments flows directly from the statute which is a statutory function specifically empowered by the Act, 2022 read with Rules, 1981 and (ii) the Arbitration Tribunal exercises quasi-judicial powers to resolve disputes concerning the validity or propriety of trade organizations' actions, elections etc, it functions as public authority, discharging duties mandated by the statute having binding effect which acts in a capacity that is more than private and without approaching the Tribunal the parties cannot take any legal recourse including civil court are substantiated.

It is well settled now which can be gathered from reading the above mentioned decisions from home and abroad that it is possible to find list of factors giving rise to the jurisdiction of judicial review, but it is wrong to think that the presence of all those factors as essential or as being exclusive of other factors. The essential elements are public element, which can take many different forms. The source of power is usually a decisive factor though not the only factor. If the source of power is contractual, as in the case of private arbitration, then clearly the arbitrator is not subject to judicial review. Admittedly the present Arbitration Tribunal is not constituted by the parties in dispute under any contract like arbitration tribunal under Arbitration Act, 2001. Consequently it cannot be termed as private arbitration tribunal. Then can it be said that the Tribunal in question is statutory tribunal or body? What is the test? The Indian Supreme Court gave the answer in the case reported in AIR

1976 SC 888 (supra) which has been referred by our Supreme Court, Appellate Division in approving tone [48 DLR (AD) 121] wherein it is held that there is a well-marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words, the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body. Now in the present case if we ask that if there is no statute i.e section 20(2) of the Act, 2022 and rule-3 of the Rules, 1981 would the institution i.e the Arbitration Tribunal has any legal existence? The answer is undoubtedly and unambiguously negative. The Tribunal has no separate existence of its own without any reference to the above statute along with subordinate legislation and is not merely governed by the statutory provisions. If that is the position, then can it be said that the Arbitration Tribunal, constituted under section 20(2) of the Act, 2022 and rule-3 of the Rules, 1981 by the FBCCI, a statutory body? The answer is not as simple as decided in the above mentioned case if we carefully read the provision of section 20(2) of the Act, 2022 and rule-3 of the Rules, 1981 following which the present Arbitration Tribunal is constituted. It is true that the Tribunal has no existence without the above mentioned statute but the Tribunal is not constituted by the government but by the FBCCI, a private body in accordance with the provisions of the statute and

subordinate legislation. In other words, the Tribunal is constituted not by or under the statute but in the light of the statutory provisions.

The Arbitration Tribunal in question in that sense neither private arbitration constituted under contract of the parties nor statutory body strictly under statute. But in between these extremes there is an area in which it is helpful to look not just at the source of the power but at the nature of the power. If the body in question is exercising public law functions, or if the exercise of its functions have public law consequences, then that may be sufficient to bring the body within the reach of judicial review as propounded by Lloyd LJ, in *Datafin* case and held that it cannot be the sole test whether a body is subject to judicial review is the source of its power. The distinction must lie in the nature of the duty imposed, whether expressly or by implication. If the duty is a public duty, then the body in question is subject to public law. The true view is not just the source of the power that matters, but also the nature of the duty. On this point even the learned advocate for the respondents are agreed. In the present case what is the nature of duty of the Arbitration Tribunal? The Arbitration Tribunal exercises quasi-judicial powers to resolve disputes concerning the validity or propriety of trade organizations' actions, elections etc. The Tribunal discharges its duties mandated by the statute having binding effect and without approaching it the parties cannot take any legal recourse including in civil court. Therefore the functions and duties discharging by the Tribunal are more than private. The point raised and answered in the above mentioned cases of *Datafin*, *Accord* or *Alliances* donot cover the point raised in the present case. Though the Tribunal exercises quasi-judicial power to resolve disputes having binding

effect but is its decision final? Is the law provides any alternative efficacious remedy?

On the point of exclusion of jurisdiction of the civil court and alternative forum the petitioners submitted that the Act, 2022 (Section 20 read with Rule 3) mandates arbitration for resolving disputes related to trade organizations, emphasizing alternative dispute resolution excluding court jurisdiction. These frameworks aim to ensure specialized and streamlined dispute resolution, limiting judicial interference unless exceptional circumstances arise. No efficacious or alternative forum remains after the Award/decision of the Arbitration Tribunal. Once the Arbitration Tribunal passes its award/decesion, no forum remains for further appeal or review within the framework of the Act, 2022 or Rules, 1981. The Arbitration Tribunal's decision, being final and binding under the relevant legal provisions, leave no scope for further administrative or judicial recourse except through judicial review under Article 102 of the Constitution to ensure compliance with the principles of natural justice, legality and fairness.

In reply the respondents submitted that according to the Act, 2022 there still remains 2 equally efficacious alternative forums i.e the Civil Court and Director General of Trade Organisations (DG) to take recourse upon an award/decision passed by the Tribunal. In fact, as per the proviso of section 20 of the Act, 2022 a person aggrieved by any award/decision of the Tribunal can take his next course of action and in this regard as per section 15 of the Act, 2022 the DG has wide power and therefore there remains no scope to say that DG is not an equally efficacious alternative remedy. In fact, DG may be an even more efficacious remedy than writ jurisdiction as the aggrieved parties get quick remedy while a writ petition usually takes longer time to be finally disposed off.

Maintaining the writ against the Tribunal will open a flood gate making the forum of DG ineffective and overburden the Constitutional Courts with unnecessary writ petitions, the respondents submits.

If we read section 20 with section 15 of the Act, 2022 we find that the requirement to approach the Tribunal is the *sine qua non* or pre-condition to seek remedy before the DG and as per section 9 of the Code of Civil Procedure the Act, 2022 does not oust the jurisdiction of Civil Court at all. In the case reported in 51 DLR 538 a division bench of this Court observed that the law does not exclude suit against an order passed by the Arbitral Tribunal of a trade organization of FBCCI or completely oust the jurisdiction of the court. Before coming to the court the aggrieved party is to refer the matter to Arbitration as provided in section 20 of the Act of 2022. Therefore, against the order passed by the Tribunal a suit is quite maintainable in the appropriate court having jurisdiction on the matter. The only requirement of law is that the aggrieved person must exhaust his remedies by way of reference to an arbitration tribunal before invoking the aid of the civil court which has been decided in the case reported in 55 DLR 211.

The law does not imposed complete bar rather put restriction upon the parties to go to the DG or to civil court directly without approaching the Arbitration Tribunal. Seeking remedy before the DG against the decision of the Tribunal cannot be called 'Caesar to Caesar' either because the DG has no nexus or authority in constituting the Arbitration Tribunal and it is totally a different forum.

The 2nd line of argument of the petitioners is that the Arbitration Tribunal is local authority.

Section 3(28) of the General Clauses Act, 1897 defined the phrase "Local Authority" which runs as under:

Local authority- "Local authority" shall mean and include a Paura Shava, Zilla Board, Union Panchayet, Board of Trustees of a port or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, or any corporation or other body or authority constituted or established by the Government under any law.

In a catena of decisions our superior court discussed the criteria for a body or institute to be a local authority or statutory authority.

In the case of Mofizul Huq Vs. Mofizur Rahman and others [48 DLR (AD) 121] the question was whether a non-government secondary school within the meaning of section 2(1)(h)(j) of the Intermediate and Secondary Education Ordinance, 1961 is a "Local Authority" and it is held that a non-government secondary school is neither a Local Authority nor statutory authority having failed to satisfy the criteria and speaking for the Court ATM Afzal, CJ observed as under:- *"It will be seen from above that the Learned Judge completely missed that 'other body or authority', to mean and to be included in the definition of 'local authority' must not only be constituted or established under any law (not 'by any law' as wrongly held) but the same must be constituted or established by the Government. The Learned Judge seems to suffer from an apparent misconception by holding that as the expression any authority falls in the inclusive definition of 'local authority' it cannot be said that 'any authority' does not include the school in question, especially in absence of any explicit language in the Ordinance (of 1983) by which the expression 'school' is excluded from the definition of 'any authority'. The Learned Judge has not at all considered whether a secondary school fits in that part of*

the definition of 'local authority' as has been underlined by him. The question to which he should have addressed himself is: Is the secondary school in question a body or authority constituted or established by the Government under any law? That question which is the only material question has not apparently occurred at all to the learned Judge. It must be held therefore that the view taken in that decision that a secondary school is a 'local authority' is based on a misconception and misinterpretation of the definition of local authority as quoted above." His lordship further observed: *"To be a statutory body it must, first of all, owe its existence to a statute. In other words, it must be created by or under a statute. ... A distinction must be made between a body or institution which is created by or under a statute and a body or institution which is not so created but is governed by certain statutory provisions for the proper maintenance and administration of the said body or institution. A secondary school is undoubtedly governed by the provisions of the Ordinance in question and the various other regulations made thereunder but it does not necessarily follow that the school is a creature of the said Ordinance or any other law."*

In the case of Noor-e-Alam Jahangir (Md.), English Teacher, Rifles Public School and College Vs Bangladesh and others [60 DLR (AD) 12] our Supreme Court, Appellate Division in similar language observed: *"The High Court Division, after hearing, discharged the Rule holding that the impugned order has been passed by the respondent No.7, the principal of Rifles Public School and College, who is not a government servant and further, the above Rifles Public School and College is also not a 'statutory body' or 'local authority', inasmuch as to be a 'statutory body' it must be created by a statute and the institution must owe its existence to a particular statute but the above Rifles*

Public School and College, having not been created by any statute, is not a 'statutory body' and further, a body or institution can claim to be a 'local authority' if only it is established by the government under any law but the petitioner could not refer to any law under which the aforesaid Rifles Public School and College has been established and accordingly, like other non-government secondary schools and colleges, the above Rifles Public School and College is also not a statutory body or local authority; The Court then referred its earlier reported case of 48 DLR (supra) and held the writ petition is not maintainable.

The next case upon which the respondents have relied upon is an order passed by a Division Bench of this Court in the case of *Md. Erfan Ali Vs Bangladesh & others* [Writ Petition No.3708 of 2017]. The writ petition was filed challenging the legality of the award passed by the Arbitration Tribunal of FBCCI constituted under old law i.e the Trade Organizations Ordinance, 1961. The Division Bench vacated an earlier passed order of stay as the writ petition is not maintainable relying upon the two decisions mentioned above [48 DLR and 60 DLR, supra] and observed: "In the instant case, admittedly, the FBCCI Arbitration Tribunal has not been constituted by the statute itself or the Rules. But it was constituted by the members of the FBCCI itself which is a private body. The chairman and members of the Tribunal are not also in the service of the Republic or of a local authority. The Government has not constituted the FBCCI Arbitration Tribunal itself and it was constituted by private persons as a tribunal following the provision of rule 3 of the Rules. In such case, it transpires that the FBCCI Arbitration Tribunal is neither performing any function of the Republic nor of any statutory body nor it is constituted by the Government. In view of the above, it appears that the writ petition

challenging the order passed by the Tribunal of a trade organization not constituted by the Government nor performing the functions with the affairs of the Republic or of a statutory body cannot be said to be maintainable.” This interim order was challenged in CPLA No.3041 of 2017 before the Appellate Division which was dismissed for default on 10.12.2020 and an application for restoration was filed which was rejected on 08.08.2022.

The learned advocates for the petitioners argued that the FBCCI becomes a "Local Authority" when it appoints Arbitrator(s) for the purpose of Section 20 of the Act, 2022. The definition of "Local Authority" as defined in Section 3(28) of the General Clauses Act, 1897 is expansive and broad, encompassing not just traditional local bodies like municipalities and union councils but also specialized and government-established authorities. To become a "local authority" the phrase "other authority legally entitled to" is used and it cannot simply be any organization or body, it must have been formally granted the legal right to act by or under law. The entitlement can come from statutes, government orders, or legal mandates, meaning that the entity must have been created or delegated specific powers by the State, often with a legal basis or statutory backing. Section 20 of the Act, 2022 specifically mandates the FBCCI to appoint Arbitrator with the statutory prescription. The FBCCI and Arbitration Tribunal get its authority from the Statute itself, not by any contract or from any private party. FBCCI gets legal statutory power to appoint arbitrators. On the other hand, the Arbitration Tribunal gets legal statutory power to arbitrate the dispute as per section 20 of the Act, 2022 and the Rules, 1981. The phrase "authority constituted or established by the Government under any law" in the section is also integral to the understanding of what qualifies as a "local authority." These entities are authorized to make

decisions, implement policies, and execute responsibilities related to governance or administration of justice, ensuring the effective functioning of their designated roles within the broader framework of public service. In this context, authority represents the jurisdictional power exercised by a local body under the overarching legal framework of the State or Government. It highlights the formal process of creating an authority through constitutional provisions, legislation or executive orders. It underscores that only entities formally recognized and authorized by the Government are included, thereby excluding private or voluntary organizations unless explicitly empowered by the State. This ensures that such authorities operate within a legal framework, maintaining a clear distinction between public and private entities in matters of governance. The word 'law' here should imply both primary legislation, such as Acts of Parliament and secondary legislation, such as rules, regulations or executive notifications. Here the Arbitration Tribunal is formed not only under Section 20 but also by Rule 3 of the Rules, 1981. The formation of the Arbitration Tribunal under the Rule clearly demonstrates that the Tribunal operates "under the law," as mandated by the Government. It is constituted or established with the authority to settle disputes related to trade organizations. Thus finally, in all respects, according to the learned advocates for the petitioners, the broad scope of this provision confirms that the Arbitration Tribunal qualifies as a "Local Authority" within the meaning of Section 3(28) of the General Clauses Act, 1897. The Arbitration Tribunal formed under section 20 of the Act is a "Local Authority" and The FBCCI is also a "Local Authority" only for the purpose of the appointment of Arbitrators as mandated by Law.

In reply the respondents argued the FBCCI Arbitration Tribunal is not a local authority. Section

3(28) of the General Clauses Act, 1897 has given a clear definition of 'Local Authority' and there is no way to avoid or expand or interpret what is 'Local Authority' other than the unambiguous language of the General Clauses Act. The first category includes authorities who control a municipal or local fund like the one seen in case of Zakir Hossain Vs Dhaka University [16 DLR (Dac) 361] where Dhaka University was found to be Local Authority because it controlled and managed local fund. FBCCI Arbitration Tribunal is neither funded by government nor it controls any municipal or local fund hence it is not Local Authority under this category. The second category is a body or authority a) constituted or established by government and b) under any law. These two criteria have to be satisfied to be a Local Authority for this category. The ratio has already been decided in the case of Md. Erfan Ali Vs FBCCI Tribunal and others (Writ Petition No.3708 of 2017) observing that the writ petition is not maintainable against which Md. Erfan Ali preferred CPLA No.3841 of 2017 which was dismissed for default and the restoration application was also rejected vide order dated 08.08.2022 and thus the decision passed in WP No.3708 of 2017 was upheld and relying upon the aforesaid decision another Division Bench of this Court has been pleased to discharge the Rule of Writ Petition No.4335 of 2021 vide judgement and order dated 02.05.2021 holding that the writ petition is not maintainable. The 3 decisions in Writ Petition No.3708 of 2017, in Writ Petition No.4355 of 2022 and in Writ Petitions Nos.18477 of 2017 and 13183 of 2019, all found that even though FBCCI Arbitration Tribunal has been constituted under law i.e section 12 of Trade Organisation Ordinance, 1961 and rule 3 of Arbitration Tribunal Rules, 1981 but the said Tribunal has not been constituted by the government. Since it is constituted by the private body,

FBCCI, hence the second criterion is not met as such FBCCI Arbitration Tribunal is not a Local Authority.

We have already opined that to decide the point we may look into the source of power which is usually a decisive factor though not the only factor. If the source of power is contractual, as in the case of private arbitration, then clearly the arbitration is not subject to judicial review. Admittedly the present Arbitration Tribunal is not constituted by the parties in dispute under any contract like arbitration tribunal under Arbitration Act, 2001 and as a result it cannot be termed as private arbitration tribunal. The present Tribunal has no separate existence of its own without any reference to the statute i.e section 20(2) of the Act, 2022 along with subordinate legislation i.e rule-3 of the Rules, 1981 and it is governed by the statutory provisions but if we carefully read the provisions of section 20(2) of the Act, 2022 and rule-3 of the Rules, 1981 then it is clear that the present Arbitration Tribunal is constituted following those provisions. It is true that the Tribunal has no existence without the above mentioned statute but the Tribunal is not constituted by the government but by the FBCCI, a private body in accordance with the provisions of the statute and subordinate legislation. In other words, the Tribunal is constituted not by or under the statute but in the light of the statutory provisions. The Arbitration Tribunal in question in that sense neither private arbitration constituted under contract of the parties nor statutory body strictly under statute. From the plain reading of Section 3(28) of the General Clauses Act, 1897 which defined the 'Local Authority' we find two categories of local authorities: the first category includes authorities like municipality, board of trustees, port etcetera entrusted by the Government who control a municipal or local fund such as Dhaka City Corporation, any Union

Parishad and Chattagram Port. The second category includes the corporation, other body or authority etcetera constituted or established by the Government under any law such as the Dhaka University established under the Dhaka University Act, 1921, Bangladesh Rice Research Institute, Bangladesh Agriculture Development Corporation etcetera. So far the local authority is concerned it must be either one of these two categories. The present Arbitration Tribunal is not legally entitled to, or entrusted by the Government with the control or management of any municipal or local fund and in that view it is not Local Authority under the first category. So far second category is concerned we have already decided that the present Arbitration Tribunal constituted following the provision of statute i.e section 20(2) of the Act, 2022 along with subordinate legislation i.e rule-3 of the Rules, 1981 and in that sense neither private arbitration constituted under contract of the parties nor statutory body strictly under statute. In that view of the matter in the strict sagacity of law it does not come under the second category either. For the reasons stated above we are not persuaded by the submission of the petitioners that the broad scope of the provision confirms that the Arbitration Tribunal qualifies as a "Local Authority" within the meaning of Section 3(28) of the General Clauses Act, 1897 and the Arbitration Tribunal formed under section 20 of the Act, 2022 is a "Local Authority" and The FBCCI is also a "Local Authority" only for the purpose of the appointment of Arbitrators as mandated by Law. Our firmed view is that neither the FBCCI nor the Arbitration Tribunal constituted following section 20 of Act, 2022 along with rule 3 of Rules, 1981 is local authority for any purpose so far the law stands today.

Before parting we note our deep appreciation to the amici curiae for their valuable assistance.

In the facts and circumstances and the point of law as discussed above we are constrained to hold that the writ petitions are not maintainable against the award/decision of Arbitration Tribunal constituted under the Trade Organizations Act, 2022 read with the Trade Organizations (Arbitration Tribunal) Rules, 1981. Therefore, all the rules *nisi* are discharged for not being maintainable.

The interim orders passed earlier in these writ petitions stand vacated.

Md. Iqbal Kabir, J:

I agree.

Sardar Md. Rashed Jahangir, J:

I agree.