

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

Writ Petition No. 4325 of 2023

In the matter of:

An application under article 102 of the Constitution of the People's Republic of Bangladesh.

AND

In the matter of:

BC Union Company Limited

..... **Petitioner.**

-Versus-

Government of the People's Republic of Bangladesh, represented by the Secretary, Health Services Division, Ministry of Health and Family Welfare, Bangladesh Secretariat, Abdul Gani Road, Dhaka, and others,

... **Respondents.**

Mr. Mahbub Shafique, Advocate with

Mr. Sifat Mahmud, Advocate

...For the **petitioner.**

Mr. Bepul Bagmar, D.A.G. with

Mr. Md. Delwar Hossain, A.A.G.

...For **respondent No.3**

Mr. Syfuzzaman Advocate with

Mr. Md. Riad Mahmud, Advocate and

Mr. Tanvir Ahmed Siddique, Advocate

..For **Respondent No.4.**

Judgment on: 15.07.2024

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J:

In an application under article 102 of the Constitution, on 04.04.2023 *Rule Nisi* under adjudication was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why a direction should not be given upon the

respondents to pay the petitioner the price of 10,00,000(ten lac) pieces of Disposable Protective Mask at the rate of TK.27.50 per piece; 1,00,0000 (one lac) pieces of Disposable Protective Suit at the rate of TK. 1700.00 per piece; 2,00,000 (two lac) pieces of Goggles at the rate of TK.209.00 and 1600 (sixteen hundred) pieces of Dead Body Carrying Bag at the rate of TK. 1850.00 per piece amounting to total TK. 24,22,50,000.00 (Twenty Four Crore Twenty Two Lac Fifty Thousand) only which were supplied by the petitioner to the Central Medical Stores Depot (CMSD) and/or such other or further order or orders as to this Court may seem fit and proper.”

Facts necessary for disposal of the *Rule Nisi*, in short, are that the petitioner as a company incorporated under the Companies Act, 1994 is engaged in the business of importing different types of medical equipments. A novel coronavirus disease (in short, COVID-19) was firstly identified in Bangladesh on 08.03.2020 when the healthcare system of the country was not fully prepared to tackle the pandemic situation. The Government, with a view to protect the population, declared countrywide lockdown on 23.03.2020. The healthcare service providers i.e. hospitals, doctors, nurses and other staffs throughout the country were in severe shortage of necessary health safety equipments, such as- Personal Protective Equipment (PPE), Disposable Protective Mask, Goggles, Dead Body Carrying Bag, etc. Under such critical situation, Human Rights and Peace for Bangladesh (HRPB) filed Writ Petition No. 3817 of 2020 seeking a *Rule Nisi* to be issued with a direction upon the respondents including the writ respondents to collect/procure/purchase necessary health safety equipments on an urgent basis to ensure safety of patients, doctors, nurses, staffs

during the treatment of COVID-19 virus. After hearing the petitioner and the learned Deputy Attorney General vide order dated 22.03.2020 this Division was pleased to issue *Rule Nisi* directing the writ respondents to collect/procure/purchase necessary health safety equipments on an urgent basis to ensure safety of patients, doctors, nurses, staffs during the treatment of COVID-19 virus (Annexure-B to the writ petition). The Ministry of Health and Family Welfare in compliance of the aforesaid direction constituted a 05(five) member committee and also constituted an advisory committee consisting of 13(thirteen) members (Annexures-C and C-1). The respondent No.4 namely, Director, Central Medicine Stores Depot in compliance of the aforesaid direction vide his Memo dated 27.03.2020 and 11.04.2022 requested the petitioner company to supply 10,00,000 (ten lac) pieces of Disposable Protective Mask, 2,00,000 (two lac) pieces of Goggles, 1,00,000 (one lac) pieces of Disposable Protective Suit and 10,000 (ten thousand) pieces of Dead Body Carrying Bag on urgent basis to tackle the COVID-19 outbreak (Annexure-D, D-1 and D-2).

The petitioner company, in compliance of the aforesaid requests, supplied 1,00,000 (one lac) pieces of Disposable Protective Suit on 07.04.2020, 10,00,000 (ten lac) pieces of Disposable Protective Mask on 12.04.2020, 1600 (sixteen hundred) pieces of Dead Body Carrying Bag on 28.04.2020 and 2,00,000 (two lac) pieces of Goggles on 13.05.2020. It is stated that the aforesaid equipments were duly received by the Central Medical Stores Depot. The petitioner company submitted its bills for the aforesaid

equipments (Annexures-E, E-1, E-2 and E-3). On 03.05.2020 a negotiation meeting was held between the petitioner company and the Technical Evaluation Committee (in short, TEC) wherein the unit price of the aforesaid equipments was fixed at TK.27.50 per Disposable Protective Mask, TK. 1700.00 per Disposable Protective Suit, TK. 209.00 per Goggle on the basis of which the total price of the aforesaid equipments stands to TK. 24,22,50,000.00. But the respondents did not pay the price of aforesaid equipments which were supplied by the petitioner. Thereafter, the petitioner, vide his representations dated 03.02.2021 and 19.06.2022, requested the respondents to pay off the price of the aforesaid equipments but they did not pay any heed to the requests (Annexures-G and G-1).

Subsequently, the petitioner, vide his representation dated 28.03.2023, requested the respondent Nos. 2 and 4 to pay the price of the equipments which were supplied by him. But they did not make any payment (Annexures-H and H-1). In such circumstances, on 29.03.2023 the petitioner sent legal notice requesting the respondents to make payment of the price of the aforesaid equipments. But they did not pay any heed to the legal notice (Annexure-I).

Under such circumstances, the petitioner has filed the instant writ petition in the form of mandamus, and obtained the *Rule Nisi* in the manner as stated hereinabove.

The respondent No.3, Director General, Directorate of Health, Mohakhali filed *affidavit-in-opposition* denying the material statements made in the writ petition and contending *inter-alia* that

delegation of financial power with regard to direct procurement method under the revenue head for one financial year has been provided in sections 36(D) and 68 of the Public Procurement Act, 2006 and also in rules 74(3), 75(Ka), 76(1) (T) and 76(2) of Public Procurement Rules, 2008 and its schedule-2. On the basis of the said provision the authority can purchase by direction procurement method upto the value of not more than Tk. 50,00,000.00 (fifty lac) but in a special circumstances it can purchase by direction procurement up to the value of TK. 5,00,00,000.00 (five crore). It is further stated in the affidavit in opposition that the claim of recovery of money cannot be the subject matter of the writ petition and the writ Bench has no jurisdiction to give a direction for payment of particular amount unless the same is both admitted a statutory payment. In this respect he has relied upon the case of **Chairman BWDB Vs. Shamsul Huq and Co. Limited and others, 51 DLR(AD)169**. Hence the *Rule Nisi* is liable to be discharged.

Upon placing the writ petition and supplementary affidavit Mr. Mahbub Shafique appearing along with Mr. Sifat Mahmud, the learned Advocates for the writ petitioner submits that the petitioner in compliance of the requests of the respondents, has supplied the aforesaid medical equipment during novel coronavirus(COVID-19) pandemic and there is no dispute about receiving the said equipment. The petitioner submitted the bills for the equipment but they did not make any payment of the same. He further submits that the respondents sat in several meetings and internal correspondences were made with regard to the payment of the bills.

The Ministry of Finance has already allocated the funds to the Central Medical Stores Depot for disbursing the bills to the suppliers. But they did not pay the bills of the petitioner and as such, he sought direction from this Court to ensure payment of the bills. Referring to the case of Ministry of Communications and others Vs. Panaki Chowdhury, 7 ALR (AD) 149 Mr. Mahbub Shafique, the learned Advocate also submits that the petitioner is entitled to get the entire bill amount and as such, he prayed for making the *Rule Nisi* absolute with a direction upon the respondents to pay the bills amount to the petitioner for the equipment supplied by him.

Mr. Bepul Bagmar, the learned Deputy Attorney General appearing on behalf of the respondent No.3 submits that the High Court Division under the writ jurisdiction is not a Court for the recovery of money and it has no jurisdiction to give a direction for payment of a particular amount of money to the writ petitioner unless the same is both an admitted amount as well as a statutory payment. In support of his contention the learned Deputy Attorney General has relied upon the case of **Chairman, Bangladesh Water Development Board and another Vs. Shamsul Huq and Co. Limited and others, 51 DLR (AD) 169**. Accordingly, he also submits that there being no statutory contract and the bills amount is not an admitted amount the writ petition is not maintainable and the *Rule Nisi* is, therefore, liable to be discharged.

Mr. Syfuzzaman, the learned Advocate appearing on behalf of the respondent No.4 has adopted the submissions so made by the

learned Deputy Attorney General and thereby, he has prayed for discharging the *Rule Nisi*.

We have considered the submissions advanced by the learned Advocates for both the parties, perused the writ petition, supplementary affidavit, affidavit-in-opposition and all other connected papers annexed thereto as well as the decision cited above and relied upon by the writ petitioner and the respondent.

On perusal of the writ petition it appears that the petitioner, in compliance of the requests made by the respondents during the novel coronavirus (COVID-19) pandemic, has supplied the medical equipment which were received by them vide Annexures- E, E-1 to E-3 to the writ petition. The petitioner submitted his bills amounting to TK.24,22,50,000.00. It further appears that the purchase of the equipment is the government purchase. As per the provision of the PPA, 2006 and the PPR, 2008 the Government is to go through certain provision of law to purchase the goods. Admittedly, there was no statutory contract with regard to supply of the aforesaid equipments. It also appears from the record that the Ministry of Finance vide his Memo dated 12.04.2021 gave sanction of certain amount to meet the payment of the bills for the goods procured during novel coronavirus (COVID-19) pandemic. But in the said Memo the Ministry attached certain conditions to follow the provisions of the PPA, 2006 and the PPR, 2008 in case of spending money from the allocated fund. As per schedule-2 of the PPR, 2008 in case of emergency, any purchase by direct

procurement can be made but not more than TK. 50,00,000.00. But in a special case such purchase can be made up to the value of TK.5,00,00,000.00 (five crore) subject to approval of the Ministry. It appears that the petitioner submitted bills amounting to TK. 24,22,50,00,000.00 and with regard to the payment several internal correspondences were made but no fruitful solution has yet been made. Eventually the petitioner supplier moved this Court by filing writ petition in the form of mandamus for direction upon the respondents to pay the outstanding bills of the petitioner.

By filing affidavit-in-opposition the learned Deputy Attorney General has raised a legal question that since the Rule Nisi involves recovery of money and since the Appellate Division has already settled the point that the High Court Division under its writ jurisdiction is not a court for recovery of money and has no jurisdiction to give direction to pay the money. Therefore, the *Rule Nisi* is liable to be discharged.

This kind of matter has already been settled in the case of **Chairman, Bangladesh Water Development Board and another Vs. Shamsul Huq and Co. Limited and others, 51 DLR(AD)169.** In that case, the Appellate Division held that the High Court Division in its writ jurisdiction is not a Court for the recovery of money and has no jurisdiction to give a direction for payment of a particular amount of money to the writ petitioner, unless the amount claimed is both an admitted amount as well as a statutory payment.

In this case there was no statutory contract between the parties. In view of the above decision of the Appellate Division, we do not have any alternative but to subscribe the same view in the facts and circumstances of the present case.

With regard to the decision referred by the learned Advocate for the petitioner in the case of Ministry of Communications and others Vs. Panaki Chowdhury 7 ALR (AD) 149 it appears that in that case the respondent authority had made part payment of the submitted bills and for want of necessary funds they could not pay the rest of the amount of bills. As such, the High Court Division as well as the Appellate Division interfered with the matter and directed the respondent to give the rest amount of the bills.

But in the present case, the scenario is completely different from the above case. No payment of whatsoever has been made and there was no statutory contract in between the parties. As such, the decision referred above by the learned Advocate for the petitioner is not applicable in the facts and circumstances of the present case.

Be that as it may, we want to make a note that there is no dispute with regard to the delivery of the medical equipment. The petitioner participated in the combat to manage and control the outbreak of novel coronavirus (COVID-19) throughout the country by supplying the medical equipment in compliance of the requests made by the respondents. So, the petitioner being the supplier is entitled to get the bills amount from the respondents. It is also fact that there was no statutory contract. So, the payment of the bills is not a statutory

payment, rather it involves with policy decision of the Government-how the issue of payment can be resolved. In view of the principle settled in 51 DLR (AD) 169, the petitioner does not have any remedy before the writ jurisdiction for recovery of the money. However, it appears that several negotiation meetings and internal correspondences were made regarding the issue. But they did not reach its finality. Since the present writ petition is not maintainable, the petitioner may have liberty to file an application before the Review Panel of the Bangladesh Public Procurement Authority (the BPPA) or any other appropriate forum to redress his grievance in accordance with law, if so advised.

In view of the above facts and circumstances, the *Rule Nisi* is liable to be discharged.

In the result, the *Rule Nisi* is discharged with the above observations.

This judgment will not operate as a bar to take decision by any authority or Court.

However, there will be no order as to costs.

Communicate the order.

K M Zahid Sarwar, J.

I agree.