

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No. 11248 of 2023.

In the matter of:

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

In the matter of:

Md. Foysal Alam Abul
..... Petitioner.

Vs.

Government of Bangladesh and others.

...Respondents.

with

Writ Petition No. 11249 of 2023.

In the matter of:

Md Kamrul Islam
..... Petitioner.

Vs.

Government of Bangladesh and others.

...Respondents.

Mr. Md. Uzzal Hossain, Advocate

...For the petitioner in both writ petitions.

Mr. A.M. Masum, Advocate

...For the respondent No.02 in both Writ Petitions.

**Heard on 27.11.2023 and
Judgment on: 03.12.2023**

SHEIKH HASSAN ARIF, J

1. Since the questions of laws and facts involved in the aforesaid two writ petitions are almost same, they have been taken up together for hearing and are now being disposed of by this common judgment.

Present:

**Mr. Justice Sheikh Hassan Arif
And
Mr. Justice Md. Bazlur Rahman**

1.1 Rules, in the aforesaid writ petitions, were issued in similar terms, namely, calling upon the Home Ministry and Passport Authority to show cause as to why the inaction of the respondents (respondent Nos. 1-3) in issuing E-Passports in favour of the respective petitioners against their Application Nos. 4224-000057906 dated 08.05.2023 and 4224-000057908 dated 08.05.2023, should not be declared to be without lawful authority, and as to why the respondents should not be directed to issue E-Passports in their favour as against their said applications.

2. Facts, relevant for the disposal of the aforesaid Rules, in short, are that the petitioners, being citizens of Bangladesh having National ID Nos. 5545887605 and 6438039569, desired to travel abroad due to their serious medical conditions/urgency. Accordingly, they applied, in the prescribed form, to the Passport Authority (respondent No.3) for issuance of E-Passports in their favour and paid the requisite fees. The Passport Authority (respondent No.3), accordingly, received their applications on 08.05.2023 and issued Delivery Slips

bearing Nos. 4224-000057906 and 4224-000057908. The Passport Authority then referred the same to the police office concerned for police verification. Subsequently, the petitioners came to know informally that such police clearance/reports were submitted against them in that some criminal cases were pending against them and, on that ground, the respondent authority was not issuing passports in their favour.

2.1. It is further contended that such police report, or contents of the same, were never communicated to the petitioners and that the respondent passport authority also did not inform the petitioners anything officially. It is stated that some criminal cases are pending against the petitioners, however, there is no restraint order from any Court against their free movement. Accordingly, it is contended by the petitioners that non-issuance of passports by the Passport Authority is an indirect restriction on their right to free movement, which is their fundamental right guaranteed by Article 36 of the Constitution.

2.2. It is further contended that Bangladesh Passport Order, 1973 does not have any provisions therein which restricts issuance of passport in favour of any person on the ground of pendency of any criminal case. Therefore, it is contended that such restriction is not authorized by any law. In view of above, the petitioners moved this Court and obtained the aforesaid Rules.

2.3. The Rules are opposed by respondent No. 2 (Passport Authority) by filing affidavits-in-opposition mainly contending that the police concerned have submitted police report against the petitioners in that various criminal cases were pending against them.

3. Mr. Md. Uzzal Hossain, learned advocate appearing for the petitioners, submits that there is nothing in law which restricts petitioners' free movement as guaranteed under Article 36 of the Constitution on the ground of pendency of any criminal case against them. In support of such contention, learned advocate has referred to a decision of the High Court Division in **Ruhul Kabir Rizvi Vs. Bangladesh, 69 DLR-335** and a decision of our

Appellate Division in **Durnity Daman Commission Vs GB Hossain, reported in 74 DLR (AD)-1.**

3.1 As against above submissions, Mr. A.M. Masum, learned advocate appearing for the respondent No. 2, has found it very difficult to refer to any specific provision of law including Passport Order, 1972, or any order of any competent authority including any Court of Bangladesh, to satisfy this Court that free movement of the petitioners, as guaranteed under Article 36 of the Constitution, may be restricted by refusing to issue passports in their favour.

4 Evidently, non-issuance of passport by the passport authority in favour of a citizen is an indirect restriction on his free movement as guaranteed by Article 36 of the Constitution. Such restriction can only be imposed with the authority of law or by order of any competent Court. But, apparently, there is no such legal authority on record. This Court has repeatedly held that such free movement cannot be restricted capriciously. In support of such legal position, the decisions of this Court is **Durnity Daman Commission Vs. GB Hossain, 74 DLR (AD)**

(2022)-1 and Ruhul Kabir Rizbi Vs. Bangladesh, 69 DLR-337 may be referred to.

4.1 Apart from above, it further appears from the very delivery slips (Annexures-B in both writ petitions) concerned that a specific date has been given therein for collection of the passports. However, the passport authority has not even bothered to make any communication with the petitioners saying that they would not get their passports on the said fixed delivery date for any reason including the reason of pendency criminal case against them. In this regard, we have examined Article 6 of the Bangladesh Passport Order, 1972, which also does not impose any such restrictions on such free movement of the citizen on the ground of pendency of criminal case.

4.2 This being so, we are of the view that the action of the respondents in not issuing passports in favour of the petitioners is nothing but an indirect restriction on their free movement which is not authorized by law or any order of any competent authority including Court.

Therefore, such restrictions cannot stand in the eye of law.

4.3 In view above, we find merit in the Rules and the same should be made absolute.

4.4 In the result, the Rules are made absolute. Thus, the actions of the respondents in not issuing E-Passports in favour of the petitioners against their Application Nos. 4224-000057906 dated 08.05.2023 and 4224-000057908 dated 08.05.2023, are declared to be without authority and is of no legal effect. Accordingly, respondent Nos.2 and 3 are directed to issue E-passports, as against the said applications, in favour of the petitioners within a period of 15 (fifteen) days from receipt of the copy of this order.

Communicate this.

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(Sheikh Hassan Arif,J)

I agree.

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(Md. Bazlur Rahman, J)