

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

**WRIT PETITION NO. 9010 OF 2023**

IN THE MATTER OF :

Megatech GNBD, Dhaka

...Petitioner

- V E R S U S -

Bangladesh and others

.... Respondents

Mr. Hasan M.S. Azim, with

Mr. Ashfaqur Rahman, Advocates

.....For the petitioner

Mr. Mohammad Salim, AAG

...For the respondent No. 5

Ms. Tamanna Rahman, Advocate

...For the respondent No. 6

**Present:**

**Mr. Justice Zafar Ahmed**

**And**

**Mr. Justice Khandaker Diliruzzaman**

Heard on: 09.11.2023, 22.11.2023 and  
04.01.2024

Judgment on: 06.03.2024

**Zafar Ahmed, J.**

In the instant writ petition, the petitioner challenged the decision dated 25.06.2023 (Annexure-I-1) passed by the respondent No. 4 Central Procurement Technical Unit (CPTU) refusing to entertain the Review Petition dated 22.06.2023 (Annexure-I) and also the decision

of the respondent No. 1 Secretary, Ministry of Land in giving approval to alter a partner of a Joint Venture (JV) company namely 'JV of BETS-MEGATECH' and thereby, replacing one of the partners of the said JV namely 'Megatech GNBD' (petitioner) by including ARC Bangladesh Limited (respondent No. 7) for the project 'Mouza and Plot Based National Digital Land Zoning Project, Ministry of Land' as evident from the impugned Memo No. 31.00.0000.091.07.017-21-417 dated 11.05.2023 (Annexure-G1) purportedly issued under Rule 54(9) of the Public Procurement Rules, 2008.

At the time of issuance of the Rule Nisi, this Court passed an interim order staying operation of the impugned memo.

Challenging the interim order, respondent No. 1 (Secretary, Ministry of Land) filed Civil Petition for Leave to Appeal No. 2265 of 2023. The Apex Court, vide order dated 07.08.2023 passed an order staying operation of the stay order passed by this Division till disposal of the Rule and directed this Bench to dispose of the Rule on merit.

Respondent No. 5 (Project Director, Mouza and Plot Based National Digital Land Zoning Project) and Respondent No. 6 (BETS Consulting Services Limited) contested the Rule by filing separate affidavit-in-opposition.

Facts, relevant of the disposal of the Rule, in brief, are that a Joint Venture (JV) namely BETS-MEGATECH was formed, vide agreements dated 09.09.2021 and 12.01.2022 respectively. Respondent No. 6-BETS is the lead partner of the said JV having 55% sharers and petitioner- Megatech holding 45% shares.

Respondent No. 5- Project Director issued a Letter of Invitation (LOI) in favour of 5(five) short listed candidates for the project, namely Consultancy Services of Procurement of Mouza Map Digitalization and Geodatabase Creation, Chattogram Division. Eventually, the JV comprising the respondent No. 6 and the petitioner was awarded Notification of Award on 22.05.2022 and the procuring entity entered into a contract with the JV on 26.05.2022 in respect of the project.

It appears from the materials on record that some disputes arose between the partners of the JV (petitioner and respondent No. 6) in respect of execution of the project in question. The parties could not resolve the disputes amicably. Eventually, the respondent No. 6 BETS wrote a letter to the Project Director (respondent No. 5) for alteration of the existing JV partner *i.e.* the petitioner with that of the respondent No. 7 to overcome the difficulties regarding performance of the contract and the deadlock situation. The concerned authority including

the HOPE (Head of Procuring Entity) approved the request of the BETS. The same was communicated to the BETS, vide impugned memo dated 11.05.2023 (Annexure-G1). Thereafter, vide memo dated 22.05.2023 (Annexure-G), BETS informed the petitioner that the petitioner had been excluded from the JV and that the agreement between the BETS and the petitioner is treated as cancelled. It further appears from the affidavit-in-opposition that on 23.05.2023 the contract in respect of the project was amended by which the respondent No. 7 ARC was included in the JV and the new name of the JV is “JV of BETS –ABL”. The learned Advocate appearing for the petitioner submits that the petitioner was not informed of the contract dated 23.05.2023 and for this reason the same was not mentioned in the writ petition. There are other facts, which, in our view have no bearing upon the disposal of the Rule.

In the whole exercise including request by the BETS (respondent No. 6) to exclude the petitioner from the JV and approval of the HOPE was done under rules 54 (9) and 54(10) of the Public Procurement Rules, 2008.

Upon hearing the learned Advocates of the petitioner, the respondent No. 6 and the learned Assistant Attorney General appearing for the respondent No. 5 and considering the facts of the

case as well as the relevant provisions of the Public Procurement Act, 2006 and the Public Procurement Rules, 2008, it appears that the main grievance of the petitioner is directed against its former JV partner *i.e.* respondent No. 6 BETS which is a private body. Since, a new partner has been inducted into the JV and the relevant agreement in respect of the project has been amended prior to issuance of the Rule, which this Court was not aware at the time of the issuance of the Rule, we are of the view that the Rule has lost his force. Therefore, adjudication of the action taken by the public bodies *i.e.* relieving the petitioner from the JV is merely an academic exercise which shall not bring any fruitful result. Moreover, such academic exercise has been highly discouraged by the Apex Court.

Be that as it may, since the main grievance of the petitioner is directed against the respondent No. 6, which is a private body, the petitioner is at liberty to take civil action against respondent No. 6, if so advised.

With the above observations, the Rule is disposed of.

**Khandaker Diliruzzaman, J.**

I agree.