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

VAT Appeal No. 03 of 2021

In THE MATTER OF:
Value Added Tax Appeal under Section 124 of the Value Added Tax and Supplementary Duty Act, 2012.

-AND-

IN THE MATTER OF:
A.J.R. Transport Agency Limited.
.....Appellant

-Versus-

Customs, Excise and VAT Appellate Tribunal, Dhaka-1000 and others.
.....Respondents

Mr. Munshi Moniruzzaman with
Mr. Yousuf Khan Rajib with
Mr. Sakib Rezwan Kabir with
Mr. Ahmed Ishtiaque, Advocates
.... For the Petitioner

Mr. Mr. Kamrul Islam with Mr. A.R.M. Kamruzzaman Kakon, Deputy Attorney Generals with Mr. Sovan Mahmud, Mr. Mohammad Alam Khan, Mr. Md. Sarwar Alam Chowdhury, Ms. Mahfuza Binte Awal, Mr. Md. Shahinur Alam, Mr. Hossain-E-Monjur, Assistant Attorney Generals
....For the respondents-Government

Heard on: 10.11.2026 and
***Judgment on: 24.11.2026*.**

Present:
Mr. Justice S.M. Maniruzzaman
and
Mr. Justice Yousuf Abdullah Suman

Yousuf Abdullah Suman, J:

This VAT appeal is directed against the judgment and order dated 30.05.2021 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka (respondent no. 1 herein), in Appeal Case No. CEVT/Case(VAT)-91/2019, communicated vide Nothi No. CEVT/Case(VAT)-91/2019/1041 dated 13.06.2021.

The material facts necessary for the determination of this appeal are as follows. The appellant, A.J.R. Transport Agency Limited, is engaged in the business of transporting various goods. It was alleged to have evaded VAT, whereupon a demand-cum-show-cause notice was issued on 06.02.2018 by Dr. Md. Shahidul Islam, the then Commissioner of Customs, Excise and VAT Commissionerate. Subsequently, on 22.01.2019, another Commissioner raised a final demand, directing the appellant to pay Tk. 3,63,44,413/- on account of the alleged VAT evasion. The appellant challenged that demand before the Customs, Excise and VAT Appellate Tribunal. The very Commissioner who had issued the demand-cum-show-cause notice, namely Dr. Md. Shahidul Islam, however, sat as President of the Tribunal, along with another member, and after hearing of the appeal, they upheld the demand. Being aggrieved by that decision, the appellant preferred the instant VAT appeal before this Division.

The submissions of the learned senior Counsel for the appellant, Mr. Munshi Moniruzzaman, principally rest on the maxim *nemo judex in causa sua*, meaning that no one shall be a judge in his own cause. He submits that, since the then Commissioner, Dr. Md. Shahidul Islam, had himself issued the demand-cum-show-cause notice, his subsequent participation as President of the Tribunal in adjudicating the appellant’s appeal rendered him disqualified under the principles of natural justice. In support of this contention, he relies on several decisions, both domestic and international.

He first refers to *REB vs. Maziruddin Ahmed* [2018] 70 DLR (AD) 151. In that case, an REB engineer had been dismissed. The respondent who had initially issued the show-cause notice proposing the dismissal also initiated the appellate process by forwarding the matter to the appellate forum with adverse recommendations. The same respondent thereafter signed the appellate decision affirming the dismissal. The Appellate Division held that the decision was vitiated by the respondent's involvement at each stage: he had issued the show-cause notice, transmitted an adverse recommendation in the appellate process and, ultimately, signed the appellate decision. Such conduct amounted to a serious breach of the first principle of natural justice, namely, that no person shall be a judge in his own cause (nemo judex in re sua). The learned Counsel for the appellant also refers to *Masudur Rahman vs. Nazrul Islam* [2021] 29 BLT (AD) 310; *Mohd. Yunus Khan vs. State of Uttar Pradesh* [2010] 10 SCC 539; and *Murari Mohan Das vs. Bangladesh* [1977] 29 DLR 53, in order to fortify his submissions.

Mr. Munshi, however, places particular reliance on *R vs. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 2)* [1999] 1 All ER 577. He submits that, in that case, Lord Hoffmann, a member of the House of Lords Bench, had been associated with Amnesty International Charity Limited (AICL), an organisation connected with Amnesty International (AI), which was involved in the proceedings. Upon disclosure of Lord Hoffmann's association, the House of Lords set aside its earlier decision delivered in 1998 and reheard the matter before a differently constituted Bench,

excluding Lord Hoffmann. The decision establishes, as the learned Counsel submits, that proof of actual bias is not necessary; apparent bias is sufficient to disqualify a decision-maker. Thus, even if Dr. Md. Shahidul Islam was not actually biased, his involvement in the present matter was sufficient to disqualify him on the ground of apparent bias, he submits. The learned Counsel, therefore, prays that the appeal be allowed and the order of the Customs, Excise and VAT Appellate Tribunal be set aside.

On the other hand, Mr. Md. Shahinur Alam, the learned Assistant Attorney General (AAG) appearing for the respondents-Government, submits that the initial show cause notice issued by Dr. Md. Shahidul Islam was merely a preliminary administrative communication which does not constitute a final demand or adjudication of the petitioner's VAT liability. The final demand was independently issued by another Commissioner, S. M. Humayon Kabir, reducing the demand from initial one. Thus, the final determination was made by a different authority, demonstrating that the earlier communication was neither conclusive nor determinative of the petitioner's VAT liability. In this context he refers to *Shri Jaspal Singh vs. Lt. Governor of Delhi and Others* [2002] 10 SCC 667.

The learned AAG further submits that the doctrine of *Nemo Judex in Causa Sua* cannot be invoked merely because Dr. Md. Shahidul Islam had previously issued a preliminary administrative communication in his official capacity. The relevant question is whether his previous involvement was such as to create a reasonable apprehension of bias or demonstrate a predetermined mind. In this

context, he places reliance on *Mainul Hossain vs. Bangladesh* [2017] 9 SCOB HCD 11, wherein this Division held that the principles of natural justice are flexible and their application depends upon the nature of the function and the facts and circumstances of each case. He further contends the petitioner has failed to demonstrate any objective circumstance indicating that the learned President had a personal, pecuniary or other disqualifying interest in the outcome of the appeal, or that he had acted with a closed mind. He places reliance on *A.K. Kraipak vs. Union of India* [1969] 2 SCC 262, wherein the Hon'ble Supreme Court of India held that the test of bias is whether there exists a reasonable ground for believing that the decision-maker was likely to have been biased, having regard to human probabilities and the ordinary course of human conduct.

The learned AAG further submits that the respondents do not dispute the fundamental principle that justice must not only be done but must manifestly be seen to be done. However, the mere fact that the learned President of the Tribunal had issued an earlier preliminary administrative communication, which was neither a final adjudication nor the operative demand, does not automatically establish apparent bias. The final demand was independently issued by another Commissioner, and the petitioner has failed to produce any objective material demonstrating prejudgment, personal interest or a closed mind on the part of the learned President. He, therefore, submits that the principle of *nemo judex in causa*

sua has no application to the facts of the present case and prays for dismissal of the appeal.

We have heard the learned Counsel appearing for both sides, perused the memorandum of appeal and the documents appended thereto, and considered the relevant provisions of law.

The crux of the present appeal lies in the application of the principle of *nemo judex in causa sua*, which embodies the rule that 'no one should be a judge in his own cause'. It is a long-established principle of natural justice, recognised and applied by courts across jurisdictions. Although its application has been considered in different contexts, its underlying object remains constant: the decision-making process must be free not only from actual bias but also from circumstances giving rise to a reasonable apprehension or suspicion of bias. Proof of actual bias is, therefore, not invariably necessary; the existence of a real danger or a reasonable apprehension of bias may itself be sufficient.

The decision in *Pinochet*, supra, provides the clearest explanation of the application of this principle. The relevant association of Lord Hoffmann with Amnesty International Charity Limited, an organisation connected with Amnesty International, gave rise to the issue of apparent bias, notwithstanding that AICL itself was not a party to the appeal. It was the Amnesty International that was the party. The matter was accordingly reheard by a differently constituted Bench, excluding Lord Hoffman. The House of Lords held that, *the principle that a judge was automatically disqualified from hearing a matter in his own cause was not restricted*

to cases in which he had a pecuniary interest in the outcome, but also applied to cases where the judge's decision would lead to the promotion of a cause which the judge was involved together with one of the parties. The principle has also been applied in our jurisdiction in a number of cases, including, *Murari Mohan Das vs. Bangladesh* [1977] 29 DLR 53; *REB vs. Maziruddin Ahmed* [2018] 70 DLR (AD) 151; and *Masudur Rahman vs. Nazrul Islam* [2021] 29 BLT (AD) 310. It has likewise been considered by the Indian Supreme Court in many of its decisions, notably, in *Mohd. Yunus Khan vs. State of Uttar Pradesh* [2010] 10 SCC 539.

In the present case, it is admitted that Dr. Md. Shahidul Islam, the then Commissioner, issued the demand-cum-show-cause notice. It was that very notice which ultimately led to the proceedings culminating in the instant appeal. His involvement in the matter, therefore, cannot be regarded as wholly unrelated to the dispute subsequently placed before the Tribunal. Despite the availability of other Benches, he participated in the adjudication of the appeal as President of the Tribunal. In the circumstances, we are of the view that his participation squarely attracts the principle of *nemo judex in causa sua*. The submission of the learned Assistant Attorney General that Dr. Md. Shahidul Islam merely issued the show-cause notice and was not involved in the earlier adjudication, therefore, carries little weight.

Furthermore, since the question is whether the circumstances gave rise to a reasonable apprehension of bias, and proof of actual bias is not required, we consider it unnecessary to examine whether Dr.

Md. Shahidul Islam was, in fact, biased. We express no opinion on that question.

In view of the foregoing findings and observations, this appeal succeeds.

Accordingly, the appeal is allowed.

The judgment and order dated 30.05.2021 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka (respondent no. 1 herein), in Appeal Case No. CEVT/Case(VAT)-91/2019, communicated vide Nothi No. CEVT/Case(VAT)-91/2019/1041, is hereby set aside.

The Customs, Excise and VAT Appellate Tribunal is directed to constitute a fresh Bench, excluding Dr. Md. Shahidul Islam, and rehear the appeal and dispose of the same within 6 (six) months from the date of receipt of a copy of this judgment and order.

The ratio of this judgment is confined only to appellate forum(s), and has no application to adjudicating authorities or any other authorities appointed under the VAT Act.

Let a copy of this judgment and order be transmitted to the concerned respondents forthwith.

S.M. Maniruzzaman, J:

I agree.

P.K. Barai/ABO