

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

Writ Petition No. 2271 of 2024

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Eastern Tower Flat Owners' Co-operative
Society Limited, represented by its
Secretary

...Petitioner

-Versus-

Dhaka Power Distribution Company
Limited (DPDC), represented by its
Managing Director, and others

... Respondents

Mr. Reja-E-Rabbi Khandaker, Advocate with
Ms. Meherunnesa, Advocate

...For the petitioner

Mr. Md. Mokleshur Rahman, Advocate

... For the respondent No. 1

Mr. Mohammad Waliul Islam Oli, D.A.G with

Mr. Mohammad Rashadul Hassan, D.A.G,

Ms. Nilufar Yesmin, A.A.G,

Mr. Md. Moshir Rahman (Rahat), A.A.G,

Mr. Md. Motasin Billah Parvez, A.A.G and

Mr. Bishwanath Karmaker, A.A.G

.... For the respondents

**Heard on 03.02.2026, 26.04.2026, 27.04.2026 and
03.05.2026**

Judgment on 06.05.2026

Urmee Rahman, J:

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

In the instant matter a Rule Nisi was issued on an application under Article 102 of the Constitution of the People's Republic of Bangladesh in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the issuing of the arbitrary Bill being No. 5558141, Customer No. 16178903, Account No. 0011633 dated 08.01.2024 by the Respondent No. 1/Dhaka Power Distribution Company Limited (DPDC) without following the Compromise Agreement dated 17.10.2023 and the Judgment and Order of BERC dated 28.10.2018 and 10.12.2023 should not be declared to have been made illegal, without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule it was further ordered that,

“Pending hearing of the Rule, the respondent no. 1 is hereby directed not to disconnect the electricity line of the petitioner.

The respondent No. 1 is directed to produce regular Monthly Bill from the period of January, 2024 onwards and the petitioner is directed to pay the regular bills.”

Necessary facts for disposal of the instant Rule, as narrated in the writ petition, in short, are that, the petitioner i.e. the Eastern Tower Flat Owners' Co-Operative Society Limited (ETFOCS Ltd.),

is the flat-owners' association of 150 (one hundred and fifty) apartments situated at 51 New Eskaton Road, Dhaka. This building complex i.e. the Eastern Tower consists of 3 (three) eighteen storied buildings. In addition to the 150 apartments, there are 38 (thirty-eight) commercial shops and 01 (one) commercial Bank situated in the common area of this building complex. The Respondent Dhaka Power Distribution Company Limited (DPDC) is its electricity supplier. This building complex was constructed in the year 1989. Power Development Board (PDB) and Dhaka Electricity Supplier Authority (DESA) used to supply electricity to this building complex till June 2008. After creation of DPDC, it started supplying electricity to Eastern Tower from July 2008. All on a sudden in July, 2009 DPDC changed its metering system. Challenging this act of DPDC, the petitioner filed a Dispute Settlement Application No. 03 of 2015 before Bangladesh Energy Regulatory Commission (BERC) on 02.07.2015.

On hearing both the parties BERC pronounced the Award on 28.10.2018. Since DPDC was not complying with the terms of the Award, Petitioner wrote several letters to DPDC authority on 01.11.2018, 31.01.2019 and 11.04.2019 requesting them to implement the same but with no result. Being aggrieved, the petitioner filed Writ Petition No. 5890 of 2019 to compel DPDC to implement the Award pronounced by the BERC and obtained a Rule. During pendency of the Rule the High Court Division disposed of the Rule and referred the matter back to BERC to

adjudicate the disputed question of fact. Meanwhile, both the parties arrived at a compromise. Following the compromise agreement between the parties, BERC pronounced its verdict on 10.12.2023 incorporating the terms of the compromise into the order. Yet DPDC failed to implement the compromise agreement to its full effect. Being aggrieved thereby the Petitioner has filed the instant Writ petition and obtained the Rule.

After issuance of the Rule on 27.02.2024, the respondent No. 1 filed an application for modification of the interim order passed by this Division at the time of issuance of the Rule. On hearing the application this Division by the order dated 12.05.2024 passed the following order:

“In view of the above, we are inclined to direct the petitioner to pay the ‘undisputed amount’ of Tk. 6,566,789.00 within 24(twenty four) equal monthly installments as per the Compromise Agreement dated 17.10.2023 and the BERC Judgment dated 28.10.2018 and 10.12.2023.

The respondent DPDC is directed to furnish monthly bill with full breakdown for each month from July, 2009 to November, 2017 using clause 10.3.3.2 of "বিদ্যুৎ-এর মূল্যহার ও নিয়ন্ত্রাবলী- ১৯৮৯" and from December, 2017 to December, 2023 using tariff publish by BERC

within 03(three) months from the date of receipt of this order, failing which the order dated 12.05.2024 shall stand vacated.

The respondents are further directed to inform this Court the amount of transformer loss from July 2009 to December 2023 using clause 10.3.4 of "বিদ্যুৎ-এর মূল্যহার ও নিয়মাবলী-১৯৮৯."

Being aggrieved by this order the respondent No. 1 filed Civil Petition for Leave to Appeal No. 1955 of 2024 before the Appellate Division. On hearing both the parties Appellate Division was not inclined to interfere with that order and sent the matter before this Division for hearing the Rule.

Mr. Reja-E-Rabbi Khandaker, learned Advocate appeared for the petitioner. At the very outset he submits that, the respondent No. 1 DPDC arbitrarily started sending electricity bill from July, 2009 without following the appropriate tariff and the relevant rule of the appropriate authority and as such the impugned Bill being No. 5558141, Customer No. 16178903, Account No. 0011633 dated 08.01.24 issued by the Respondent authority is illegal, without lawful authority and is of no legal effect.

He next submits that, the Respondent DPDC authority sent the impugned electricity bill without following the appropriate tariff as per the Award dated 28.10.2018 pronounced by the BERC

and as such the impugned Bill is liable to be declared to have been issued without any lawful authority.

He emphatically submits that, DPDC has committed an error of law as well as in fact by sending the impugned bill dated 08.01.2024 as the bill was not prepared following the terms of the compromise agreement dated 17.10.2023 followed by the Judgment and Order dated 10.12.2023 by the BERC and therefore, the impugned Bill is liable to be set aside.

His next contention is that, the DPDC has committed gross error of law as the bill was not produced by DPDC on monthly basis and it does not demonstrate how the bill was generated and what sort of tariff was used and as such the impugned bill is liable to be set aside.

He finally submits that, the DPDC authority most arbitrarily and with mala fide intention issued the letter dated 18.02.2024 asking the Petitioner to make payment in accordance with that bill having acknowledged that there was a gross error in the impugned bill dated 08.01.2024 and as such the impugned bill is liable to be declared to have been issued without lawful authority and of no legal effect.

On the other hand, learned Advocate Mr. Md. Mokleshur Rahman, entered appearance on behalf of respondent No.1, i.e. the Managing Director, Dhaka Power Distribution Company Limited (DPDC) and contested the Rule by filing an affidavit in opposition.

The main contention of the learned Advocate appearing for respondent No. 1 is that, this Rule is not maintainable for there is an alternative forum available in the Bangladesh Energy Regulatory Commission Dispute Settlement Regulations of 2014.

He submits that, the subject matter of the writ petition is an electric bill issued by the DPDC, which has been disputed by the petitioner by preparing a bill by themselves. Section 53 of the Electricity Act, 2018 provides for Arbitration Proceedings in order to settle the dispute in respect of supply or use of electricity. The instant writ petition has been filed without availing the said alternative forum, hence this Rule is liable to be discharged.

He further submits that, the main contention in filing the instant writ petition is that, without following the compromise agreement dated 17.10.2023 and the Award and order of the BERC dated 28.10.2018 and 10.12.2023 respectively, the impugned electric bill has been issued. Regulation 24 (C) of the BERC Regulations of 2014 provides for the procedure for enforcement of the order or directions given by the Commission itself or BERC Tribunal or Arbitral Tribunal under these Regulations. The instant writ petition has been filed without exhausting this specific alternative forum, hence the same is not maintainable and in the result the Rule Nisi is liable to be discharged.

We have heard the learned advocates for the respective parties and perused the writ petition, supplementary affidavits

thereto, affidavit in reply, affidavit in opposition and all the documents annexed therewith.

It has been stated in the affidavit in reply sworn in on 08.05.2026 that, in pursuant to the ad-interim order passed at the time of the issuance of the Rule the respondent No. 1 i.e. DPDC authority has been sending the electricity bill to the petitioner from January, 2024 onwards till date and the petitioner is also making regular payment accordingly. Admittedly, the respondents are sending bills without showing any arrears from September, 2024. It is also admitted that, there is no bill pending against the petitioner except the impugned bill.

The main contention of the petitioner is that, even though the petitioner and the respondent No. 1 have settled the dispute on compromise on 17.10.2023 (Annexure-I), which was further confirmed by an Order of BEREC on 10.12.2023 (Annexure-J, the Respondent authority is not complying with the order giving full effect to the terms with which the dispute was settled between the parties.

It appears from Annexure-‘J’ that, the compromise was formally approved by the BEREC on 10.12.2023 in the following manner:

“উভয়পক্ষ বিস্তারিত আলোচনান্তে নিম্নরূপ:

০৪। উভয় পক্ষের মধ্যে বিস্তারিত আলোচনা হয় এবং আলোচনা শেষে বিদ্যুৎ, জ্বালানী ও খনিজ সম্পদ মন্ত্রণালয়ের "বিদ্যুতের-এর মূল্য হার ও নিয়মাবলী-১৯৮৯ অনুযায়ী জুলাই' ২০০৯ হতে এফ' ট্যারিফ অনুযায়ী

গ্রাহকের মাদার মিটারে বিল করার সিদ্ধান্ত গৃহীত হয় এবং যে সময় হতে **BERC**-এর ট্যারিফ জারী করা হয়েছে, সে সময় হতে **BERC** এর ট্যারিফ অনুযায়ী বিল প্রস্তুতের সিদ্ধান্ত গৃহীত হয়।

ইন্টার্ন হাউজিং লিঃ-এ একক পয়েন্ট মিটারিং পদ্ধতিতে সংযোগ হওয়ায় পৃথকভাবে ট্রান্সফরমার লস্ বিভাজনের সুযোগ নাই-মর্মে ডিপিডিসি'র পক্ষ হতে জানানো হয়। তাছাড়াও রোয়েদাদ-এর পরেই বর্ণিত দোকান ও ব্যাংকের সংযোগ পৃথক ট্রান্সফরমার হতে প্রদান করা হয়।

০৫। ইন্টার্ন টাওয়ার ফ্ল্যাট মালিক সমবায় সমিতি লিঃ বকেয়া বিলসমূহ ২৪ কিস্তিতে পরিশোধের জন্য অনুরোধ করার প্রেক্ষিতে এফ ট্যারিফ বিল প্রস্তুতের পর ইন্টার্ন টাওয়ার ফ্ল্যাট মালিক সমবায় সমিতি লিঃ ১ম কিস্তি/সমস্ত বিল নির্ধারিত সময়ের মধ্যে এলপিএস ছাড়া এবং নির্ধারিত সময়ের পরে বিধি মোতাবেক গ্রাহক এলপিএস-সহ অবশিষ্ট বিল ২৩ কিস্তিতে পরিশোধ করবেন মর্মে-সিদ্ধান্ত গৃহীত হয়।

০৬। সমঝোতা বাস্তবায়নের পূর্বে বিইআরসি-তে উভয় পক্ষের স্বাক্ষরিত সমঝোতা পত্র দাখিল করার এবং বর্তমানে হাইকোর্টে চলমান রীট নং- ৫৮৯০/২০১৯ গ্রাহক কর্তৃক **Non-Prosecution** করার সিদ্ধান্ত গৃহীত হয়।"

পারস্পরিক সমঝোতায় সম্মত হওয়ায় তা কমিশনের নিকট গৃহীত হলো। বিদ্যমান ১০০০ কেভি ট্রান্সফরমারের যে ভাড়া আদায় হয়েছে তা সমন্বয়যোগ্য/ফেরতযোগ্য নয়। বিগত ২৮/১০/২০১৮ খ্রি. তারিখের রোয়েদাদ অনুযায়ী ডিপিডিসি বিদ্যমান ১০০০ কেভি ট্রান্সফরমারের ভাড়া (যেকোন ধরনের বকেয়াসহ) দাবি করা হতে বিরত থাকবে। দাবিকারী ইন্টার্ন টাওয়ার ফ্ল্যাট মালিক সমবায় সমিতি লিমিটেড, রমনা, ঢাকা কর্তৃক ১৯/০১/২০২০ খ্রি. তারিখে দাখিলকৃত আবেদন উভয় পক্ষের সমঝোতার ভিত্তিতে নিষ্পত্তি করা হলো। সমঝোতা পত্রটি আদেশের অংশ মর্মে গণ্য হবে।"

At this point it is required to examine the Award made by the BERC on 28.10.2018 (Annexure-D). In the Dispute Settlement Application No. 03 of 2015 the Commission came up with an Award upon hearing both the parties. Content of the Award is quoted below:

“রোয়েদাদ:

উভয় পক্ষের দাখিলকৃত দলিলাদি পরীক্ষা-নিরীক্ষা ও বিস্তারিত শুনানি অন্তে প্রতিপক্ষ ঢাকা পাওয়ার ডিস্ট্রিবিউশন কোম্পানী লিমিটেড এর বিরুদ্ধে ইষ্টার্ণ টাওয়ার ফ্লাট মালিক সমবায় সমিতি লিমিটেড কর্তৃক দাবিকৃত প্রতিকারের বিষয়ে কমিশনের রোয়েদাদ নিম্নরূপ:

- ১। ডিপিডিসি ১১ কেভি মাদার মিটারের মাধ্যমে দাবিকারীর কমন এরিয়ার বিল ১১ কেভিতে নির্ধারিত টারিফ অনুযায়ী এবং প্রতিটি আবাসিক ফ্ল্যাটে এলটি মিটারের মাধ্যমে এলটি আবাসিক টারিফ ক্যাটাগরিতে স্ল্যাব সুবিধাসহ বিল প্রণয়ন করবে;
- ২। বিদ্যমান ১০০০ কেভি ট্রান্সফরমারের ভাড়া আদায় হতে ডিপিডিসি বিরত থাকবে; এবং
- ৩। ডিপিডিসি ইষ্টার্ণ টাওয়ারে অবস্থিত শপিং কমপ্লেক্স ও উত্তরা ব্যাংক লিমিটেডকে মাদার মিটারের বাইরে এলটি বাণিজ্যিক সংযোগ প্রদানের প্রয়োজনীয় ব্যবস্থা নেবে এবং ১১ কেভি গ্রাহক হিসেবে ইষ্টার্ণ টাওয়ার ফ্লাট মালিক সমবায় সমিতি লিমিটেডের আবেদন সাপেক্ষে গ্রাহক নাম পরিবর্তনের প্রয়োজনীয় ব্যবস্থা নেবে।”

The present petitioner alleges that, though the petitioner filed application for changing its name as per the term of this Award, the respondent No. 1 did not comply with the same, which is also evident from the impugned bill annexed as Annexure-L.

It appears from the abovementioned Award that, the **BERC fixed the bill for the common area of the petitioner to be paid as per the tariff fixed for 11 KV electricity consumer.** From the

compromise decision passed by BERC on 10.12.2023 it appears that, when the parties arrived at the compromise it was decided that the bills from July, 2009 shall be calculated as per the ‘F’ tariff provided in “বিদ্যুতের এর মূল্যহার ও নিয়মাবলী-১৯৮৯” and from when the tariff of BERC has come into force, that tariff shall be applied in preparing the bill.

There appears to be some ambiguity in the terms of the compromise as to the specific dates and tariff category for the purpose of calculating the bill. For this reason, in the interim order dated 12.05.2024 this Division specifically mentioned that, the respondent DPDC is directed to furnish monthly bill with full breakdown for each month from July 2009 to November, 2017 using clause 10.3.3.2 of “বিদ্যুতের এর মূল্যহার ও নিয়মাবলী-১৯৮৯” and from December 2017 to December 2023 using tariff published by BERC. Though the ambiguity as to the dates has been clarified by this order, there still remains vagueness as to which specific category of tariff of BERC shall be applicable in this case.

From Rule 10.0 of the Rules of 1989, it appears that it is regarding ‘Class-F: Medium Tension Regular Consumption (মধ্যম চাপ সাধারণ ব্যবহার). Rule 10.3.3 provides that “মধ্যম চাপ বাল্ক গ্রাহক, যাহাদের বিদ্যুৎ ব্যবহার প্রধানতঃ (প্রায় ৮০%) আবাসিক ধরনের এমন প্রতিষ্ঠানচত্বর, সেনানিবাস বা একই ধরনের বৃহৎ কমপ্লেক্স যেখানে একক পয়েন্ট মিটারিং পদ্ধতি সেখানে রেকর্ডকৃত মোট এনার্জিকে নিম্ন লিখিত উপায়ে দুই ভাগে বিল করিতে হইবে।” and in Rule 10.3.3.2 there is a specific direction for calculation, which is applicable in case of the petitioner.

According to these provisions of the Rules of 1989 the Eastern Tower building complex falls under the category of “মধ্যম চাপ সাধারণ ব্যবহার” (Medium Tension consumers) as a residential consumer. From the Rules of 1989 it also appears that, the electricity load used for the Medium Tension Consumers is 11 kv. Which means that, the common area of the Eastern Tower Building Complex is in the category of residential type of 11 kv. Medium Tension Consumer.

It is admitted that DPDC took over from PDB and started preparing the bills from 2009. The tariff of DPDC fixed by BERC is different from that of PDB. It appears from Annexure ‘D-1 series’ that, in the BERC tariff there are as many as six categories of consumers who have been classified in Class-A to Class-J. Class-F of this tariff refers to ‘Medium Tension Regular Consumers (11 kv)’ and a single rate is fixed for this class. Until 2017 there was no classification in the “মধ্যম চাপ সাধারণ ব্যবহার (11 kv)” category in the said tariff.

On 23.11.2017 DPDC fixed their tariff by classifying the category of “মধ্যম চাপ সাধারণ ব্যবহার (MT): 11 KV” in six different classes and the petitioner comes under class 1, which is MT-1: Residential.

For this reason, while passing the order dated 12.05.2024 this Division categorically mentioned that in preparing bill from December, 2017 to December, 2023 the tariff published by BERC shall be applied. Though BERC fixed its tariff in 2009, there being

no classification for Medium Tension Consumer category, DPDC was directed to apply the old 1989- Rules in order to calculate the bill for this period.

It is our view that the main confusion as to the terms of the compromise arrived at by both the parties arose due to the lack of description in the terms as to the specific date and consumer category under which the Eastern Tower building complex comes. The ambiguity regarding the date has been made clear by the order dated 12.05.2024 but the ambiguity regarding the tariff category is still existing.

Therefore, we find that the compromise decision finally approved by the BERC on 10.12.2023 requires interpretation in order to give full effect of it. Before moving to that we shall determine the issue of maintainability raised by the learned Advocate for the respondent No. 1.

His main contention is that, this Rule is not maintainable because there is an alternative forum available under the BERC Dispute Settlement Regulations, 2014 in Regulation 24C, which provides as follows:

“If any party or parties, without a valid reason, refuses or fails to enforce any order or directive given by the Commission or BERC Tribunal or Arbitral Tribunal under these Regulations;

(a) the Commission may impose upon such party or parties administrative fines determined by the Commission and such fines shall be liable to be realized as Public Demand; or

(b) it will be treated as an offence and for such offence the said person shall be liable to be sentenced with imprisonment for a term not exceeding 3 (three) months or with fine not less than' Taka 2000 (two thousand) or with both; and in case of continuation of the offence he shall be liable to be fined with an amount not exceeding Taka 500 (five hundred) for each day."

From this particular provision we find that if any party refuses or fails to enforce any order passed by the Commission or Tribunal, BERC has the authority to impose fine or impose punishment upon that defaulter party. This provision does not confer any authority upon the Commission to interpret its own decision by reviewing it. Furthermore, in the present case we find that, DPDC has neither refused nor has failed to enforce the order, rather a confusion arose in calculating the impugned electricity bill due to the lack of description in the terms of the compromise.

With the discussion and findings made hereinabove we are of the view that ends of justice would be met if we direct the

respondent no. 1 to revise the impugned bill as per the modified order passed this court hereinbelow and submit the same before BERC authority i.e. the pro-forma respondent no. 5 of this writ petition. On receipt of the draft bill prepared and submitted by the DPDC, BERC shall dispose of the matter finally.

The order dated 10.12.2023 passed by the Bangladesh Energy Regulatory Commission in Dispute Settlement Application No. 03 of 2015 under memo No. 28.01.0000.016.31.010.15.147 is hereby modified. The calculation of tariff for the disputed period from July 2009 to December 2023 shall be made in the following manner:

“বিদ্যুৎ, জ্বালানী ও খনিজ সম্পদ মন্ত্রণালয়ের বিদ্যুতের মূল্যহার ও নিয়মাবলী-১৯৮৯” এর ১০.৩.৩.২ বিধি অনুযায়ী জুলাই’ ২০০৯ হতে নভেম্বর ২০১৭ পর্যন্ত ‘এফ’ ট্যারিফ অনুযায়ী এবং ডিসেম্বর ২০১৭ থেকে ডিসেম্বর ২০২৩ পর্যন্ত BERC কর্তৃক ২৩.১১.২০১৭ তারিখে জারিকৃত ট্যারিফ অনুযায়ী 11 kv MT-1 residential consumer এর জন্য প্রযোজ্য ট্যারিফ অনুযায়ী বিল প্রস্তুত করা হবে।”

Since it is evident from the record that the respondent No. 1 has been complying with the direction given by this Division at the time of issuance of the Rule till date, they are further being directed to continue to produce the electricity bills regularly in the same manner and not to disconnect the electricity connection until the matter is finally disposed of by the Bangladesh Energy Regulatory Commission.

In the result, the Rule is disposed of with the directions given hereinabove.

However, there is no order as to costs.

Communicate the judgment and order at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO