

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

WRIT PETITION NO. 6564 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:

Bhawal Engineers & Construction Ltd.
represented by its Managing Director

.... Petitioner

-versus-

Government of the Peoples Republic of
Bangladesh and others

.... Respondents

Mr. Kayser Kamal, with

Mr. Abul Kalam Azad, Advocates

... for the petitioner

Mr. Md. Asaduzzaman, Attorney General with
Mr. Zahirul Islam, with Mr. Muhammad
Rafiul Islam, Advocates

... for the respondent Nos.1 and 3

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Mr. Justice A.K.M. Rabiul Hassan

Hearing on 08.12.2024

Judgment on 08.12.2024

Sashanka Shekhar Sarkar, J:

This *Rule Nisi* at the instance of the petitioner was issued on an application under Article 102 of the Constitution in the following terms:

*“Let a Rule Nisi be issued calling upon the
respondents to show cause as to why the decision of*

the respondent Nos. 2-6 debaring the petitioner from participating in any tender under the whole-e-GP portal from 26.05.2024 to 25.05.2026 by publishing its name in the Debarment List in e-Gp website of the Central Procurement Technical Unit (CPTU), so far it relates to Serial No. 07, (Annexure-F) under section 64 of Public Procurement Act, 2006, Rules 54, 54 (11), 127 of Public Procurement Rules, 2008 as contained in E-mail dated 23.05.2024 at 19.35 PM by the e-GP System Admin of the respondent No. 6 (Annexure-E) and thereby blacklist the petitioner for 02 (two) years and as to why the e-mail dated 23.05.2024 at 19.35 PM by the e-GP System Admin of the respondent No. 6 informing the petitioner company about the decision of debarment from the e-GP System should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders pass as to this Court may seem fit and proper

ITT Clause 4.2 (b) Section 64 of Public Procurement Act 2006, Rule 54(11), 127 of Public Procurement Rules, 2008 as contained in E-mail dated 30.06.2024 sent at 18.20 PM by the e-GP System Admin of the respondent No. 6 (Annexure-E) and as to why the e-mail dated 30.06.2024 sent at 18.20 PM by the e-GP

System Admin of the respondent No. 6 (Annexure-E) informing the petitioner company about the decision of debarment from the e-GP System, should not be declared to be without lawful authority and are of no legal effect and/or such other or further order or orders be passed as to this Court may seem fit and proper.”

At the time of issuance of the Rule, this court was pleased to direct the Respondent Nos. 2-6 to allow the petitioner to access in the e-GP portal for petitioner's pending works (Annexure – G) to the writ petition only.

The relevant facts for disposal of the Rule are that the petitioner is a limited company is engaged in the business as general contractor, consultant, architect, designer, estimator and planner etc. The petitioner company is one of the highest tax payers in the Mymensingh District and by this time it has successfully completed several construction works worth over hundred corers taka all over the country. The petitioner company entered into Joint Venture Agreements with Rana Builders (Pvt.) Limited on 02.11.2023 in order to bid for and perform the works of Tender ID No. 866247, Tender ID No. 866253 and Tender ID No. 866318 and Tender ID No. 866322. The Joint Venture Agreements were executed such that Rana Builders (Pvt.) Ltd. shall share 98% of the profit and Loss, whereas the petitioner company shall hold 2% of the profit and loss. The Joint Ventures shall be named “Rana Builders (Pvt.) Ltd. - Bhawal Engineers & Construction Ltd. – JV” (RBL-BECLJV). Thereafter under the Joint Venture, the Petitioner Company along with the 1st Party, as a

minority shareholder, submitted tender proposals along with all required certificates and papers for Tender Id. No. 866247, 866253, 866318 and 866322. The Rana Builders (Pvt.) Ltd. – Bhawal Engineers & Construction Ltd. – JV ultimately failed to get Award of said tenders. Subsequently, respondent No.5 all on a sudden vide its letter being memo No. 35.01.3936.180.14.003.24-426 dated 13.02.2024 issued a show cause notice alleging that while evaluating the Tender along with the documents in relation to Tender ID No. 866247, 866253, 866318 and Tender ID No. 866322 as demanded by the Tender Evaluation Committee, the Payment Certificate submitted by the lead partner, Rana Builders (Pvt.) Ltd. was found to be false. In the show cause notice, it was further alleged about fraudulent practice against the petitioner company under Section 27 and 64 of the Public Procurement Act 2008, and Rule 127 of the Public Procurement Rules 2008. Subsequently, the petitioner company promptly wrote a reply and submitted vide its Memo No. BECL/2024/PE/189 dated 18.02.2024 to the respondent No.4's office but till date the petitioner company has received no written or verbal replies to the same.

Thereafter, the petitioner company was apprehending a reply from respondent No. 5 to its utter shock as surprise the petitioner company received an e-mail from the respondent No. 6 on 01.07.2024 at 11.24 am that the petitioner company was debarred from the e-GP Portal for a period of one years, Debarred period being 01.07.2024 to 30.06.2025 for fraudulent practice according to ITT Clause 4.2 (b), Section 64 of the Public Procurement Act, 2006 Rule 54 (11) 127 of Public Procurement Rules 2008. Subsequently upon checking the e-GP Website the petitioner company found its name on the Debarment list as serial No. 35, debarring

the petitioner company from participating in any tender under the whole e-GP Portal from 01.07.2024 to 30.06.2025 by publishing its name in the Debarment list in e-GP website of the Central Procurement Technical Unit (CPTU) and thereby petitioner company cannot participate in any fresh tender and make any correspondence for its current ongoing works via e-GP System. Being aggrieved, the petitioner company filed the instant writ petition and obtained Rule and direction.

Mr. Kayser Kamal along with Mr. Abul Kalam Azad, learned Advocates appearing for the petitioner by referring the impugned letter Annexure – E submits that the respondents debarred the petitioner company from participation in the tender process of the Government illegally and with malafide intention in violation of the Public Procurement Act 2006 and Public Procurement Rules, 2008.

As against this, Mr. S. M. Zahirul Islam appearing for the respondent No. 3 by filling an affidavit-in-opposition and submits that the respondent No. 3 rightly debarred the petitioner company from the e-GP portal for one year as per ITT Clause 4. 2(b), Section 64 of PPA 2006 and Rules 54 (11), 127 of PPR, 2008 for exercising fraudulent practice and the debarment is effective on the current tender process.

Mr. Muhammad Rafiul Islam, the learned Advocate appeared for the respondent number 1 by filling an affidavit-in-opposition and adopted the submissions of the learned Advocate for the respondent number 3.

Heard the learned Advocates of both the parties at length and perused the writ petition and the materials on record.

Thereafter, the learned Attorney General Md. Asaduzzaman appearing for the respondent number 1 and 3 very frankly made

submissions that as the writ petitioner being only 2% share holder of Joint Venture Company has been penalized to be debarred from one year, while the another share holder, Rana Builders (Pvt.) Ltd. being 98% shares holder have been penalized by same tenure (one year) and therefore, the period of imposed penalty upon the petitioner company be reduced to the period already suffered.

The learned Advocates for the petitioner concede the submissions of the learned Attorney General.

Having considered the submission of both the parties, we are inclined to dispose of this Rule with a direction that the debarment period of the petitioner company, namely Bhawal Engineers & Construction Ltd. from e-GP portal is reduced from 01.07.2024 to 30.11.2024 i.e. the debarment period of 01 (one) year is reduced to 05 (five) months.

With the above observation and direction, the instant Rule is disposed of.

The debarring period of the petitioner company in the E-GP Portal of the Government is reduced to 05 (five) months from 01.07.2024 to 30.11.2024 instead of 1 (one) year and the respondents are hereby directed to take necessary steps regarding the same within 01 (one) week from receipt of the copy of this judgment and order.

However, there is no cost to the parties.

Communicate the judgment and order at once.

A.K.M. Rabiul Hassan, J.

I agree.

