

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

Present

Ms. Justice Fatema Najib

And

Mr. Justice Sikder Mahmudur Razi

Writ Petition No. 10984 of 2024

In the matter of:

An application under Article 102(2) of the Constitution
of the Peoples Republic of Bangladesh

And

In the matter of:

Khan Tariqul Islam FCA

.....Petitioner.

-Versus-

Government of Bangladesh represented by the
Secretary, Ministry of Finance, Finance Division,
Bangladesh Secretariat, Dhaka others.

.....Respondents.

Mr. Mohammad Ahasan, Advocate with

Mr. Mohammad Golam Kibria, Advocate

.....For the petitioner.

Mr. Md. Asadur Rahman, Advocate

....For the respondent No. 2.

Mr. Kazi Ershadul Alam, Adv.

...For the respondent No. 5

Heard on: 07.05.2025, 21.05.2025 & 14.08.2025

And

Judgment on: The 10th December, 2025

(Sikder Mahmudur Razi, J:)

1. On an application under Article 102 (2) of the Constitution of the
People's Republic of Bangladesh Rule Nisi was issued in the following terms:

"let a Rule Nisi be issued calling upon the respondents to show cause as to why the Memo letters under No. 177/FRC/APR/2024/178 dated 21.01.2024. Memo No. 177/FRC/APR/2024/179 dated 22.01.2024, Memo No. 177/FRC/APR/2024/181 dated 28.01.2024. Memo No. 177/FRC/APR/2024/183 dated 30.01.2024, Memo No. 177/FRC/APR/2024/190 dated 12.02.2024. Memo No. 177/FRC/APR/2024/202 dated 24.03.2024 and Memo No. 177/FRC/APR/2024/204 dated 24.03.2024 (Annexures-G, G-1, G-2, G-3, G-4, G-5 and G-6) issued by the respondent No. 3 with regard to audits performed by the petitioner prior to advertisement dated 26.02.2023 for enlistment in the FRC most particularly for the assessment year 2021-2022 and pursuant there to issuance of Letters under Memo No. ICAB/FRM&PR/2023/169 dated 23.11.2023, Memo No. ICAB/FRM&PR/2024/15 dated 28.01.2024, Memo No. ICAB/ENF/2024/04 dated 21.04.2024. Memo No. ICAB/ENF/2024/20 dated 02.05.2024, Memo No. ICAB/ENF/2024/28 dated 04.07.2024, Memo No. ICAB/ENF/2024/49 dated 01.08.2024 (Annexures- H, H-1, H-2, -3, H-4, H-5, and H-6) issued by the Respondent No. 6 and subsequent action taken by the respondent Nos. 5 and 6 upon the petitioner vide Memo No. ICAB/ENF/2024/81 dated 30.09.2024 (Annexure-O) should not be declared to have been issued and taken without lawful authority and is of no legal effect and/or pass such other or further order or orders passed as to this Court may seem fit and proper"

2. Facts gathered from the substantive petition as well as various supplementary affidavits are that the petitioner is a chartered accountant with remarkable background. He has ICAB enrolment No. 501, obtained Certificate of Practice (CoP) on 16.03.2021 with effect from 07.02.2021 holding CoP No. 765. He is also a registered member as Associate and Fellow dated 10.10.1985

and 17.03.1991 respectively of the Institute of the Chartered Accountants of Bangladesh (ICAB). He has been awarded with Certificate of Practice under ICAB to perform his role as certified auditor. He worked as Deputy Managing Director & Chief Financial Officer (CFO) of Dutch-Bangla Bank PLC. He is also affiliated with BOKS International, an UK based platform for internationally focused professional service firms. The petitioner has been performing audits for renowned public and private companies, and Public Interest Entities (PIEs).

The Financial Reporting Act, 2015 came into effect on 09.09.2015. As per section 31 of the said Act no auditor and/or audit firm can conduct audit of any Public Interest Entities (PIEs) without being enrolled under the said act. As per section 32 of the said Act, the Council is to award certificates of enlistment in accordance with the rules framed under this Act. The Rules namely the Financial Reporting Council (Auditor and Audit Firm Enlistment) Rules, 2022 came into operation on 10.11.2022.

According to the Rules, 2022 the FRC published a circular on 26.02.2023 for enlistment of auditors and audit firms for the financial year 2023-2024 in prescribed form but the same was not congruent with the original form appended with the Rules as Form 1 & 2. Respondent no. 5 ICAB also informed respondent no. 2 FRC about such inconsistencies pointing out the complications arising there from. On 27.03.2023 FRC issued a revised circular making some minor corrections in the previous form but yet those revised forms were also not compatible with the original ones as prescribed in the Rules, 2022.

The petitioner applied to FRC on 30.05.2023 for enrolment both as an individual Auditor as well as Audit Firm and provided all the information as per

circular in compliance with the FRC Act and Rules. Yet the petitioner was not listed by FRC and FRC did not follow the pre and post procedural requirements. Subsequently, on 14.06.2023 FRC issued a letter to the petitioner asking to submit additional information regarding his audit clients and copies of monthly VAT returns for the period of 01.07.2022 to 30.05.2023, beyond Form-1 and Form-2. However, the petitioner supplied everything as asked for. Again, FRC issued another letter on 10.07.2023 asking the copies of Audit Financial Statements along with audit reports of 10 companies and the petitioner also complied with it. Subsequently, the petitioner was served with a letter dated 23.09.2023 addressing subject matter, “Large Number of Audit done without performing audit procedure” and “Large Number of Disclaimer of Opinions”.

Subsequently, by email dated 22.10.2023 and 23.10.2023 and during visitation on 23.10.2023, the concerned officers from FRC asked for 96 working paper file of 48 Public Interest Entities (PIEs) and the same was also complied with. The concerned officers of FRC checked those files and left the office without raising any issue or objection rather while leaving they further requested for audit details (hard copy) of 243 PIEs and of 228 non-public interest entities. Though the petitioner supplied the requested documents of PIEs but informed the FRC that he is not going to share the information or documents of non-public entities as FRC has no jurisdiction over the same.

As the petitioner came to know about the refusal of his application, he served notice demanding justice and then filed Writ Petition No. 2005 of 2024 which is waiting for final adjudication. FRC being tip off about the possible legal battle became revengeful and issued letters dated 21.01.2024, 22.01.2024,

28.01.2024, 30.01.2024, 12.02.2024, 24.03.2024 (2) total 7 letters to Institute of Chartered Accountants of Bangladesh (ICAB) i.e. respondent no. 5 (Annexure- G to G-6 to the writ petition) for taking legal action against the petitioner. In reference to those letters ICAB issued several notices to the petitioners (Annexure- H-1 to H-7 to the writ petition). The allegations are:

- (i) Five allegations relates to issuance of “disclaimer of opinion” in audit reports with further allegation of violation of International Standards on Auditing (210) and International Standards on Auditing (705) by not withdrawing from auditing the financial statements of the companies.
- (ii) One allegation relates to consortium audit of Chottogram Port Limited (2021-2022).
- (iii) One allegation relates to audit of Adex Corporation Limited (2020-2021) and Adex Engineering Limited (2020-2021).

In response to the seven letters of FRC and the Follow up Review Report of ICAB, the petitioner provided comprehensive explanations to ICAB by letters dated 06.02.2024, 21.05.2024, 21.05.2024, 21.05.2024, 21.05.2024, 13.08.2024 (Annexure- I to I-5 to the writ petition). The petitioner further issued notice demanding justice on 19.08.2024 demanding withdrawal of the letters issued by FRC and ICAB and filed the writ petition on 04.09.2024 and informed the matter to the respondents verbally; yet, Investigation and Disciplinary Committee (IDC) of ICAB made a recommendation to the Council of ICAB through a report recommending revocation of Certificate of Practice (CoP) for a period of 03 years and further to impose penalty of Tk. 3,00,000/- only. This development came to the knowledge of the petitioner only when

respondent no. 6 issued a letter dated 15.09.2024 to the petitioner informing that the Council has decided to give a personal hearing to the petitioner on 21.09.2023 (Annexure- L to the 1st supplementary affidavit of the writ petition).

The petitioner through his learned advocate served a lawyer certificate dated 18.09.2024 upon the respondent no. 2 FRC and respondent no. 5 ICAB which were received by them on 19.09.2024. The petitioner also gave a reply of the report of IDC of ICAB through email dated 21.09.2024. However, ICAB proceeded with the matter and issued a disciplinary order on 30.09.2024 (Annexure- O to the 2nd supplementary affidavit of the writ petition) and thereby revoked the Certificate of Practice (CoP) for 1 (one) year and imposed penalty of Tk. 3,00,000/- only to be paid within 03 months in default the revocation will extend for further 1 year.

On these facts the instant Rule was issued.

3. Mr. Mohammad Ahsan, learned advocate appearing with Mr. Mohammad Golam Kibria learned advocate made comprehensive submission in support of the petitioner's case and they also placed before the court a written submission articulating as follows:

(a) The Financial Reporting Act, 2015 was enacted on 09.09.2015 with the aim for establishment of a Council for the purpose of bringing the financial reporting activities of public interest entities under a well-framework, formulating standards for the accounting and auditing profession, proper compliance, implementation, supervision and performing other functions related thereto. The FRC was established on 23.04.2016. However, as per section 7(Gha) of the Act the FRC has jurisdiction over its enlisted auditors and

audit firms only. Since the petitioner has not yet been enlisted it had no authority over the petitioner in any manner whatsoever. This being admitted by the ICAB the initiation and continuation of the departmental proceedings by the ICAB pursuant to the letter of the FRC is tainted with *malafide*, arbitrary use of power and the proceedings have been initiated with malice in law. Therefore, the entire proceedings and the awarding of punishment by the ICAB are without lawful authority and are of no legal effect.

(b) The *malafide* activities of the FRC are evident from the materials on record. The initiation of the proceedings against the petitioner at the behest of FRC is *malafide*, the same reflects demonstration of misuse of the powers conferred on the ICAB for the alien purpose not for the purpose for which the powers have been conferred. Thus the entire proceedings and its outcome cannot be sustained in law or equity.

(c) One of the allegations against the petitioner was non-observance of paragraph 22 of the ISA 220 (Revised). The petitioner's reply was that, the financial statements allegedly scrutinized by ICAB and FRC was for the financial year of 2021-2022 (year started on 1 July 2021), whereas, the ISA 220 (Revised) is effective for audits of financial statements for periods beginning on or after December 15, 2022 as per paragraph no. 10 of the said ISA. Therefore, the allegation leveled against the petitioner is absolutely mala fide.

(d) Another allegation against the petitioner was non-observance of paragraph 28 of the ISA 315 (Revised 2019); assessment of risk at financial statement level and assertion level is a mandatory requirement for the audit of financial statements. As against this, the submission of the learned Advocate was that the financial statements allegedly scrutinized by ICAB and FRC was

for the financial year of 2021-2022 (year started on 1st July 2021), whereas, the ISA 315 (Revised 2019) is effective for audits of financial statements for periods beginning on or after December 15, 2021 as per paragraph no. 10 of the said ISA. Therefore, the allegation leveled against the petitioner is absolutely *malafide*.

(e) Another allegation against the petitioner was that management representation letters of some of the engagements contradicts with the disclaimer of opinion i.e. the clients in the management representation letters (ISA 580) claimed to have supplied sufficient information and documents but the petitioner issued disclaimer of opinion claiming that sufficient appropriate audit evidence could not be obtained.

As against this, the learned Advocate submitted that as per Paragraph 18 and 20 of ISA 580, if the auditor concludes that the written representations are not reliable, "The auditor shall disclaim an opinion on the financial statements in accordance with ISA 705 (Revised) if: (a) The auditor concludes that there is sufficient doubt about the integrity of management such that the written representations required by paragraphs 10 and 11 are not reliable". Despite claim by the management, the auditor (the petitioner) could not obtain sufficient appropriate audit evidence to form an audit opinion, that's why disclaimer of opinion was issued as per ISA 705 (Revised). Therefore, the allegation leveled against the petitioner was made without considering relevant ISA 580 with a *malafide* intention.

(f) Another allegation against the petitioner was non-observance of ISA 230; that "Sufficient and appropriate audit documentation was not preserved in the audit files and audit reports were issued without obtaining sufficient

appropriate audit evidence as per ISA 230". As against this, the learned Advocate submitted that as per ISA 705 (revised), Para A25, in case of a disclaimer of opinion, auditor has to report in the "Auditor's Responsibility Section" that "the auditor's responsibility is to conduct an audit of the entity's financial statements in accordance with ISAs" (Illustration 4 and 5) instead of "the petitioner conducted his audit in accordance with ISAs" (ISA 700, revised Para 28 (a), Illustration 1 for unqualified opinion, Section 'Basis for Opinion'). It is clearly instructed in the ISA 705 (Revised) that in case of "Disclaimer of Opinion" the auditor should not certify that the audit was conducted in accordance with ISAs; therefore, the question of compliance with any or more specific ISAs is irrelevant and inapplicable in such a case, when auditor issues a "Disclaimer of Opinion" because sufficient evidence could not be obtained to express an opinion. In cases of all disclaimers of opinion, the petitioner has complied with the instructions of ISA 705 (Revised). Therefore, the allegation leveled against the petitioner is misinterpretation of ISAs and absolutely *malafide* to victimize the petitioner.

(g) Another allegation was that the petitioner signed and issued audit reports on the financial statements of ADEX Corporation Ltd. (2021-2022) and ADEX Engineering Ltd. (2021-2022) without the signature of the concerned officials of the companies. As against this, the learned Advocate submitted that, those were duly signed by the concerned officials of the respective companies. The respective original office copies of the audited financial statements retained by the petitioner with original signatures of respective company officials have been submitted with Supplementary Affidavit dated 24.10.2024. Therefore, the

allegation is tainted with *malafide*, malice in law and misuse of power for an alien purpose and not for the purpose it purports to be.

(h) That before conducting the audit through consortium, the petitioner had written to the ICAB on 29.11.2022 to enquire as to whether they have any objection or embargo regarding audit conducted through consortium. ICAB gave a response vide letter dated 19.12.2022 but did not raise any objection. Moreover, the petitioner is one of the three auditors involved in the financial statements of Chottogram Port Authority (2021-2022), but the petitioner is the only one who have been made accused and penalized. Thus, the authorities (FRC and ICAB) have adopted pick and choose method only to victimize the petitioner. Therefore, the same is tainted with *malafide*, malice in law and misuse of power for an alien purpose and not for the purpose it purports to be.

(i) Another allegation was that the petitioner issued Form 23B prior to obtaining Professional Clearance or passing 14 (fourteen) days after sending the professional clearance letters to the previous year's auditors. As against this, the learned Advocate submitted that neither in Part III, Schedule C of ICAB By-Laws Part-1 clause 5, nor in Council Directive No. 1.13 there is anything mentioning about Form-23 B. The Form-23B is a mandate of Companies Act, 1994. However, without obtaining professional clearance from the previous auditor no audit was performed and no DVC was given by the petitioner. The minimum gap between sending professional clearance letters to the previous auditors and issuing DVC was 94 days; therefore, the question of waiting for 14 (fourteen) days become redundant. It was designed only to harass the petitioner. On the other hand while the petitioner had issued to ICAB a letter dated 24.07.2024 with a list of 62 auditors who have issued DVCs within 14

(fourteen) days of seeking professional clearance from the petitioner as previous year's auditor, yet no action was taken against those defaulting auditors by the ICAB (Supplementary affidavit dated 29.04.2025). Thus, it appears that the petitioner has been victimized for settling the previous score.

(j) Another allegation against the petitioner was non-observance of paragraph 13. (b)(i) of the ISA 705 (Revised) that "The practitioner documented that the books of accounts were not obtained. The petitioner should have withdrawn from audit engagements in compliance with Para 13. (b) (i) of ISA 705 (Revised)". As against this, the learned Advocate submitted that the Companies Act, 1994 [Section 213 (4) and (5)] is the applicable law and it will prevail over the ISA and other standards and guidelines (Paragraph 03 of Preface to International Quality Control, Auditing, Review, Other Assurance, and Related Service Pronouncements). There is no provision in the Companies Act, 1994 to withdraw from audit engagements if and when auditors have not obtained sufficient appropriate audit evidence. Rather the auditors have been entrusted with the duty to report on the financial position and performance of a company, either affirmatively or negatively, based on the given facts and circumstances as to (a) "whether he has obtained all the information and explanation which to the best of his knowledge and belief were necessary for the purpose of his audit", (b) "whether, in his opinion, proper books of accounts as required by law have been kept by the company so far as appears from his examination of those books", (c) "Whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of accounts". In all cases, the petitioner has issued the audit reports (Supplementary Affidavit dated 24.10.2024) in compliance with the

requirements of the Companies Act, 1994 [Section 213 (4) and (5)]. Therefore, the allegation leveled against the petitioner is misinterpretation of relevant laws and regulations and absolutely *malafide* to victimize the petitioner.

(k) FRC has alleged non-observance of ISA 210 by the petitioner. Whereas, the said ISA has not been endorsed by the FRC, which is evident from the Gazette Notification 22.11.2020 circulated by Financial Reporting Council of Finance Division of the Ministry of Finance. Apart from that ISA 210/7 is about "Audit Engagement Letter". Because the clients did not impose any scope of limitation in the audit engagement letters and the engagement letters were agreed with the clients and the petitioner as per Appendix 1 of ISA 210 and that is why the allegation that "the auditor was not supposed to accept the audit engagements" as per ISA 210/7 is not applicable here. Therefore, the allegation leveled against the petitioner is misinterpretation of ISAs and absolutely *malafide* to victimize the petitioner.

(l) The allegations relating to the disclaimer of opinion by the auditor is permitted in audit practice pursuant to the provisions of ISA 705(Revised), which is effective from December 15, 2016. Paragraph no. 2 of the said ISA provides for three types of modified opinion, namely, a qualified opinion, an adverse opinion and a disclaimer of opinion. Definition of modified opinion in paragraph 5 of the said ISA also endorsed a disclaimer of opinion. That the petitioner in conformity of the provision of ISA 705 (Revised) and following the structures (Illustration 4 and 5 to ISA 705 Revised) provided therein have issued disclaimer of opinion for the sake of public interest, so that the stake holders and users of the financial statement are not misled; moreover, due to disclaimer of opinion the revenue authorities are in a position to assess income

tax and VAT independently, which would have a positive impact on the revenue earning of the country. Further, the public interest entities will not be able to mislead the shareholders and intended investors in any manner whatsoever. The auditors including bank auditors who have provided false unqualified audit opinions have not been taken to task by FRC, ICAB, Bangladesh Bank, Securities Exchange Commissions or by any other authorities, as a result, huge amount of money have been laundered abroad from banking sector and corporate sector as well. The learned advocate further added that in developed countries where the auditors are being penalized for giving false unqualified opinion, the petitioner in our country is being penalized for doing the appropriate thing, which would have been appraised in developed countries.

With these submissions Mr. Mohammad Ahsan, learned advocate prayed to make the Rule absolute.

4. To oppose the Rule ICAB *i.e.* respondent no. 5 entered appearance through their learned advocate Mr. Kazi Ershadul Alam. Respondent no. 5 filed an affidavit-in-opposition denying some of the assertions of the writ petitioner so far it is related to ICAB. The learned advocate also filed a written submission articulating as follows:

(a) It is a trite principle of law that, "A writ Court cannot and should not decide on any disputed question of fact which requires evidence to be taken for settlement", as observed by the Hon'ble Appellate Division of the Supreme Court of Bangladesh in the case of *Shamsunnahar Salam and others Vs. Mohammad Wahidur Rahman and others*, reported in 51 DLR (AD) (1999) 232. The same principle has also been decided in *Writ Petition No. 3609 of 2002*.

The disciplinary order bearing memo No. ICAB/ENF/2024/81 dated 30.09.2024 ("the Disciplinary Order"), suspending the certificate of practice of the petitioner, was passed following completion of all due procedures mentioned in the Bye-Laws and assessing all the evidence, including the petitioner's written explanation and other relevant matters provided by the petitioner. Furthermore, the grounds raised in the Writ Petition are highly technical in nature and involve matters which require expert evaluation for proper adjudication. The Disciplinary Order was issued by a panel comprised of experts, including Chartered Accountants and Fellow Chartered Accountants, who reviewed all documents and materials in accordance with the applicable Bye-Laws. Moreover, the factual assertions made by the petitioner are seriously contested by the respondent No. 5, thereby giving rise to highly disputed questions of fact. Such matters, particularly where expert opinion is essential, cannot be appropriately resolved within the writ jurisdiction, which is by nature summary and limited. Therefore, the Writ Petition is not maintainable in its current form inasmuch that the Writ Petition involves resolution of highly disputed question of fact inasmuch that the grounds pleaded by the writ petitioner are (i) *Malafide*; and (ii) merit of the disciplinary actions which are in the nature of highly disputed question of fact and requires consideration of expert opinion.

(b) The Disciplinary Order should not be interfered in a Writ jurisdiction of limited scope of adjudication. Furthermore, the panel of experts of ICAB has examined the allegations and responses made by the petitioner and upon examination of the same, they have found that the petitioner was not complying with the IAS and other standards which constitute misconduct on the part of him. Accordingly, following the due procedure, the ICAB had given him the

opportunity of being heard and imposed suspension and penalty in accordance with Bye-Laws. The petitioner did not raise any objection or has taken any ground that the ICAB did not follow the procedure while imposing penalty. Hence, if there is no procedural impropriety in taking the decision by the ICAB, the findings of Investigation and Disciplinary Committee of ICAB or ICAB itself cannot be challenged in a writ jurisdiction as writ court does not sit as an appellate court to determine whether the complainant is guilty or not.

(c) In a domestic disciplinary proceeding, the High Court Division in writ jurisdiction can only look into whether such domestic tribunal has acted without jurisdiction and whether there is any breach of principle of natural justice; and not into the merit of allegations following the decision of the Hon'ble Appellate Division in the case of *Ayesha Salahuddin Vs. Chairman, Second Labour Court*, reported in 32 DLR (AD) 1980 page 69 wherein the Hon'ble Court observed as follows: *"The jurisdiction in the nature of certiorari is exercised by the High Court Division to issue such writs where the subordinate Tribunals act wholly without jurisdiction or in excess of it or in violation of the principles of natural justice or refuse to exercise jurisdiction vested in them or where there is any error apparent on the face of the record. The jurisdiction in the nature of certiorari is not so wide or large as to enable the High Court Division to controvert itself into a court of appeal and examine for itself materials to come to a new finding and substitute it with findings of the tribunal whose judgment is under challenge."* Here in the instant case, the petitioner has completely failed to show any breach of natural justice. Furthermore, the ICAB acted within its jurisdiction while passing the Disciplinary Order. Therefore, the Rule issued in the Writ Petition is liable to be discharged.

(d) Upon receiving the letters from the FRC, the respondent No. 5 did not immediately initiate any action against the petitioner rather the issue was referred to the Quality Assurance Department ("QAD") of the ICAB for further investigation. Thereafter, the QAD conducted follow-up reviews and visited the firm of the petitioner for investigation and to assess and review audit quality and IFRS compliance. Upon completion of the investigation, the petitioner was requested to provide a written explanation and appear in person for personal hearing before the ICAB by a letter dated 21.04.2024. Though the petitioner submitted his written explanation, however, the personal hearing of the petitioner was rescheduled a number of times. However, the petitioner never attended such a meeting. Even though the ICAB allowed his request a number of times, he went on to issue a notice demanding justice dated 19.08.2024 with the sole intention to avoid conducting the hearing and thereby delaying any disciplinary action. From such action of the petitioner, it is palpably clear that it is the petitioner who has filed the instant Writ Petition with the utmost intention to avoid any imposition of penalty by the statutory authority which regulates his profession.

With these submissions the learned advocate prayed to discharge the Rule.

5. On the other hand, Md. Asadur Rahman, learned advocate for the respondent no. 2 i.e. Financial Reporting Council by filing affidavit-in-opposition submitted that FRC and ICAB are two independent statutory bodies established under two different legislations and any decision taken by the ICAB is independent in nature and hence there is no scope of creating confusion that ICAB has acted at behest of the FRC. He next submitted that if there is no

procedural impropriety in taking the decision by the ICAB, the findings of IDC or ICAB cannot be challenged in writ jurisdiction as writ court does not sit as an appellate court. He next submitted that section 25(1)(Ga) of the Financial Reporting Act, 2015 empowered the Audit Practice Review (APR) Division to determine whether any code of audit or condition has been violated or not and in the instant case the APR found that the petitioner did not perform audit in accordance with concern code and therefore, this respondent issued the letters to the respondent no. 5 to hold inquiry and do the needful. He lastly submitted that the instant writ petition is not maintainable as because the impugned letters showed the professional misconduct of the petitioner which is a factual matter and in a writ jurisdiction there is limited scope of adjudication on factual matters.

6. In reply to the above submissions of respondent no. 2 and 5 Mr. Ahsan learned advocate for the petitioner submitted that in judicial review of administrative action Court's decision is shaped by looking into (a) whether a decision-making authority exceeded its power, (b) committed an error of law, (c) committed a breach of the rules of natural justice, (d) reached a decision which no reasonable tribunal would have reached or (e) abuse its power. The law requires that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. However, in the present case there is established fact of *malafide* and actions initiated with malice and purportedly an act without jurisdiction. In the entire decision-making process, the laws were miss-applied and not given effect to. Therefore, the present case is a most appropriate case for judicial review. In support of his submissions the learned advocate relied upon in a number of decisions such as

Satyendra Narayan Singh vs The State of Bihar and ors., reported in MANU/JH/0986/2008, Murari Bhagat Vs The State of Jharkhand and ors, reported in MANU/JH0719/2019, R.K. Gupta Vs. National Building Construction Corporation Limited, reported in 72(1998) DLT 121.

7. We have heard the learned advocates of all the parties, perused the writ petition, supplementary affidavits, affidavit-in-oppositions and the documents appended therewith.

One of the main submissions of the learned advocate for the petitioner was that ICAB being influenced and motivated by FRC has initiated the proceeding against the petitioner and therefore, the entire proceeding is vitiated by *malafidness*. The learned advocate further submitted that the petitioner being not listed with FRC as yet, FRC has got no authority to recommend to impose punishment upon the petitioner. He next submitted that, while taking the impugned decision against the petitioner, ICAB did not consider the number of replies given by the petitioner.

Now let us see some of the relevant provisions of Financial Reporting Act, 2015.

Section 2 sub-section 9 defines “enlisted auditors” as follows:

২। সংজ্ঞাসমূহ।-

(৯) “তালিকাভুক্ত নিরীক্ষক” অর্থ এই আইনের অধীন জনস্বার্থ সংস্থার নিরীক্ষক হিসাবে কার্যক্রম পরিচালনার জন্য পঞ্চম অধ্যায়ের প্রিধান অনুসারে তালিকাভুক্ত কোন নিরীক্ষক;

Section 7 contains the objects of the Financial Reporting Council and the relevant portions are as follows:

৭। কাউন্সিলের সাধারণ উদ্দেশ্যসমূহ- কাউন্সিলের সাধারণ উদ্দেশ্যসমূহ হইবে নিম্নরূপ, যথা

(ক) -----

(খ) -----

(গ) -----

(ঘ) কাউন্সিলে তালিকাভুক্ত নিরীক্ষকদের হিসাবরক্ষণ ও নিরীক্ষা কাজের সর্বোচ্চমান নিশ্চিতকরণ;

(ঙ) -----

(চ) -----

(ছ) -----

Section 8 contains provisions regarding the power and activities of the Council. The relevant portion runs as follows:

৮। কাউন্সিলের ক্ষমতা ও কার্যাবলী-

(১) -----

(২) উপ-ধারা (১) এর সামগ্রিকতাকে ক্ষুণ্ণ না করিয়া কাউন্সিল, নিম্নলিখিত বিষয়সমূহে উহার ক্ষমতা প্রয়োগ ও কার্যাবলী সম্পাদন করিতে পারিবে, যথা :

(ক) -----

(খ) -----

(গ) -----

(ঘ) -----

(ঙ) -----

(চ) -----

(ছ) নিরীক্ষকদের তালিকাভুক্তকরণ এবং তৎসংক্রান্ত তথ্য রেজিস্টার সংরক্ষণ এবং প্রকাশ;

(জ) অন্য কোন আইনের অধীন নির্ধারিত রিপোর্টিং চাহিদার প্রতিপালন নিশ্চিতকরণ;

(ঝ) -----

(ঞ) -----

(ট) -----

(ঠ) -----

(ড) -----

(ঢ) -----

(ণ) -----

(ত) -----

(থ) -----

(দ) -----

(ধ) -----

Section 25 contains provisions regarding responsibilities of the audit practice review division. The relevant portion runs as follows:

২৫। নিরীক্ষা চর্চা পুনরীক্ষণ বিভাগের দায়িত্ব। -(১) নিরীক্ষা চর্চা পুনরীক্ষণ বিভাগের দায়িত্ব হইবে নিম্নরূপ, যথা :-

(খ) এই আইনের উদ্দেশ্য পূরণকল্পে, দৈনন্দিনের ভিত্তিতে তালিকাভুক্ত নিরীক্ষক, নিরীক্ষা ফার্ম বা নিরীক্ষককে সহায়তা করিয়া থাকে এইরূপ কোন প্রতিষ্ঠানের নিরীক্ষা চর্চার পুনরীক্ষণ;

(গ) কোন তালিকাভুক্ত নিরীক্ষক, নিরীক্ষা ফার্ম বা নিরীক্ষক ও নিরীক্ষা ফার্মকে সহযোগিতা করিয়া থাকে এইরূপ কোন প্রতিষ্ঠান কর্তৃক এই আইনের অধীন প্রণীত নিরীক্ষা চর্চা কোড বা অডিটিং স্ট্যান্ডার্ড সমূহের প্রতিপালন অথবা উক্ত কোড বা স্ট্যান্ডার্ড এর কোন শর্ত বা বিধান ভঙ্গ হইয়াছে কিনা উহা নির্ধারণ;

Section 49 contains provisions regarding investigation of complaints etc. The relevant portion runs as follows:

৪৯। অভিযোগের তদন্ত, ইত্যাদি-

(১) কাউন্সিল, প্রিধি দ্বারা নির্ধারিত পদ্ধতিতে নিম্নলিখিত যে কোন অভিযোগের সুষ্ঠু তদন্তের ব্যবস্থা গ্রহণ করিতে পারিবে, যথা :-

(ক) কোন তালিকাভুক্ত নিরীক্ষকের বিরুদ্ধে উত্থাপিত যেকোন অসৎ নিরীক্ষা চর্চা, অপ্রহেলা বা পেশাগত অসদাচরণের অভিযোগ;

(খ) কোন তালিকাভুক্ত নিরীক্ষক কর্তৃক নিরীক্ষা চর্চা কোড এর লঙ্ঘন;

(গ) ধারা ৩৬ অনুযায়ী পেশকৃত গুরুতর অনিয়ম সংঘটন; এবং

(ঘ) এই আইন বা তদধীন প্রণীত বিধি, প্রবিধান, গাইডলাইন, স্ট্যান্ডার্ডস বা নির্দেশনায় উল্লিখিত কোন শর্ত ভঙ্গ।

Therefore, from all these provisions it is evident that the jurisdiction and authority of Financial Reporting Council is established over an auditor only when it is enlisted with it. Here, in the instant matter admittedly the petitioner has not been enlisted with FRC as yet; rather a writ petition is pending in this respect. Therefore, issuance of different memos to ICAB recommending punitive action against the petitioner as evident from Annexure G series is beyond jurisdiction of FRC as well as those are *malafide*.

It further appears from Annexure H to the writ petition that ICAB by a letter dated 23.11.2023 informed the petitioner that ICAB is going to conduct a follow-up review on quality of Audit conducted by Islam and Quazi Shafique & Co. By the same letter the petitioner was requested to send the required audit files as per Annexures.

On the other hand, FRC by its letter dated 21.01.2024 referring the audit report of M M Knitwear Ltd. for the financial year 2021-2022 prepared by the petitioner, instructed ICAB to take punitive action against the petitioner. The exact language used by FRC is “এ ব্যাপারে নিরীক্ষকের বিরুদ্ধে প্রয়োজনীয় আইনানুগ শাস্তিমূলক ব্যবস্থা গ্রহণ করে অত্র দফতরকে জানানোর জন্য নির্দেশক্রমে অনুরোধ করা হলো”। On right hand top of the said letter it has been noted as “Please do the needful and discuss” then signature was put and date was given and then the “deadline” date was fixed 27.01.2024 though the date was overwritten. FRC sent another letter to ICAB on 22.01.2024 recommending punitive action. On right hand top of the said letter it has been noted as “Please do the needful and discuss” then the signature was put and date was given and the date was again overwritten. On careful

examination it appears the digit '8' was overwritten and then the "deadline" date was fixed 27.01.2024.

From the report of the IDC of Council-ICAB (Annexure-L, page 10 of the Supplementary Affidavit dated 26.09.2024) it appears that Financial Report Monitoring & Practice Review Department (Also known as Quality Assurance Department or 'QAD'), ICAB conducted follow up review visit from 12 to 13 December, 2023 and 14 to 15 January, 2024 over the statutory audit engagements during the period from 28 October, 2022 to 21 October, 2023. The review was conducted on 10 statutory audit engagements on random basis. Copy of a "Follow-up Review Meeting Minutes" signed on 25.01.2024 has been annexed as Annexure Q to the supplementary affidavit dated 29.04.2025. From annexure-R to the supplementary affidavit dated 29.04.2025 it appears that previously ICAB conducted a special review on 12 -13 December, 2022 and 29 January 2023. Number of reviewed audit engagements was 14 (on random basis) out of which the authority found that audit reports of 11 engagements were disclaimer.

Now, from the report (Annexure-L, page 11 of the Supplementary Affidavit dated 26.09.2024) it appears that the investigating committee noted that "The IDC observed that although ICAB has received a complaint from the Financial Reporting Council (FRC), no immediate disciplinary action was taken against Mr. Khan Tariqul Islam FCA (501). The issue was referred to the QAD-ICAB for further investigation. The QAD-ICAB conducted follow-up reviews and visited Mr. Khan's firm to assess and review audit quality and IFRS compliance". It reminds us to the proverb "A guilty mind is always suspicious". If the stand of ICAB is that they have not taken any immediate disciplinary

action on the basis of complaint from FRC rather they acted independently, fairly and conducted further investigation and visited Mr. Khan's firm then the question arises when that happened? Because in their own report they mentioned that they conducted the follow up visit on 12 to 13 December 2023 and 14 to 15 January 2024 while they received complaint from FRC for the 1st time on 22.01.2024 (Annexure G to the Writ Petition). It is further interesting to note that the said report i.e. "Report on the proceeding of IDC of Council - ICAB" which was communicated to the petitioner by CEO of ICAB by letter dated 15.09.2024 as an enclosure/attachment as 'Annexure-A' is without any date and signature of the member of the investigating team (Annexure-L, page 11 of the Supplementary Affidavit dated 26.09.2024). (*Underline supplied by us*)

Moreover, neither the IDC-ICAB while recommending punishment nor the Council of ICAB while imposing punishment on the petitioner considered the replies/written explanations given by him rather they reached to the findings and conclusion of guilt "based on the non-attendance in the hearing". Other way round the recommendation and impugned decision are non-speaking one.

Therefore, if we put all these things together we will find lots of *biosignature* of collusion between FRC and ICAB and the only conclusion that can be drawn is that the action taken by ICAB was not any independent act of ICAB rather ICAB being influenced and motivated by FRC imposed the impugned punishment on the petitioner. Therefore, the entire proceedings are tainted with *malafideness* and those are act of bad faith and improper motive.

Accordingly, we find merit in the instant Rule. Hence, the same is made absolute. The notices issued by respondent nos. 3 and 6 as well as the impugned

disciplinary order on 30.09.2024 are hereby declared without lawful authority and is of no legal effect.

Communicate the judgment to the concerned authority, at once.

(Sikder Mahmudur Razi, J:)

I agree.

(Fatema Najib, J:)