

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

WRIT PETITION NO. 10985 of 2024

Present

Mr. Justice K.M. Hafizul Alam
-And-
Mr. Justice Abdur Rahman

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

IM/S Shyamolima Prokaushali Ltd.

.... Petitioner

-versus-

Secretary, Ministry of Education Secretariat, Ramna,
Dhaka-1000.

.... Respondents

Mr. Rafiqul Islam Sohel, Advocate

.... for the petitioner

Mr. Swapan Kumar Aich with

Mr. Bivuti Tarofder

Ms. Jannatul Ferdous, advocate

....for the respondent No. 2

Date of Hearing: 15.01.2026, 03.02.2026, and
10.02.2026 A.D.

Date of Judgment: 12.03.2026 A.D. Thursday, 27
Falgun 1432 B.S.

Abdur Rahman, 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 omission/inaction of the Respondents not to pay the final bill and security deposit with all interest of the completion works of Charafzal High School situated at Village-Charafzal, Union-Chargazi, Upazilla-Ramgoti (Kamalnagar), District-Lakshmipur in favour of the petitioner should not be declared to have been made without lawful authority and is of no legal effect and why the respondents should not be directed to pay the dues and security deposit with all interest of the completion worksof Charafzal High School situated at Village-Charafzal, Union-Chargazi, Upazill-Ramgoti, (Kamalnagar), District-Lakshmipur in favour of the petitioner as per letter dated 18.08.2024(Annexure-'G') and/or such other or further order or order pass as to this Court may seem fit and proper.”

The facts culminating in the issuance of the present Rule *Nisi*, in a succinct form, are delineated as follows:

At the outset, the case of the writ petitioner, as set out in the writ petition, is that M/S Shyamolima Prokaushali was duly incorporated as a Private Limited Company under the Companies Act, VII of 1913, bearing Registration No. C-20491(230)/91 with the Registrar of Joint Stock Companies and Firms. In the ordinary course of its business, the said company participated in a tender process initiated by the respondent authority through Notice No. 117(06)/Om/188/EED/SESDP (U.S.U)/2008-2009 dated 11.08.2008, inviting bids for nine separate construction works under different lots, titled *“Construction of new school building in frame structure at underserved unions including civil, sanitary, electrification works and manufacturing & supplying of furniture”* in various districts.

Pursuant thereto, the petitioner submitted its bid and was duly selected for execution of the construction work of Charafzal High School, situated at Village–Charafzal, Union–Chargazi, Upazila–Ramgoti (Kamalnagar), District–Lakshmipur, under Lot No. 6 of the tender document, upon furnishing the requisite security

deposit, subsequently, by Memo No. OM/268/EED/SESDP/(U.S.U)/2009/802 dated 12.02.2009, the respondent No. 3 issued a Notification of Award (NOA) in favour of the petitioner, directing it to proceed with the execution of the work, enter into a formal contract agreement, and furnish performance security. Thereafter, a formal work order was issued on 18.03.2009 with an approved contract value of Tk. 1,74,89,722.69 and a stipulated completion period of 450 days. The petitioner commenced the works, but it was found that it was not possible to complete the work with the proposed money. Accordingly, after analyzing, the respondent No.3 issued a letter on 24.06.2012 by approving additional money to the tune of 14.95% extension money for the said Lot No.6. Thereafter, the petitioner duly completed the work of the project, and the handover task was completed on 25.05.2013, and the respondent No.4 issued the Work Completion Certificate on 10.06.2013. Thereafter, the petitioner submitted the final bill, and unsuccessfully, sent demand letter to the respondent No.4 to pay the final bill with security deposits. Finally, the petitioner, on 18.08.2024, sent a representation requesting the respondent No.4 to pay the bill and security deposit with all interest, but

failed, and having no other equal efficacious remedy, invoked this jurisdiction.

Conversely, the respondents, upon entering appearance, contested the Rule by filing an affidavit-in-opposition, *inter alia*, reiterating the issuance of the Notification of Award and the terms of the contract, while disputing the petitioner's entitlement to the claimed dues. Additionally, the respondents claimed that on 29.09.2013, the Upazila Nirbahi Officer (UNO), Ramgati, Lakshmipur, wrote a letter to the Project Director, Secondary Education Sector Development Project, stating *inter alia* that the construction work and furniture provided were of extremely low quality, with doors already warping and being eaten by insects. Furthermore, essential works like the main gate, toilet tiles, water pumps, and water tanks had not been installed, and the school remained inaccessible during the rainy season because the road and field filling were not completed. The petitioner also left the site without a formal handover or a certificate from the school committee. Thereafter, the respondent No. 4 issued a letter dated 06.11.2013 directing the petitioner to rectify work that was deviated from the original

design and drawings. As the project period expired on 31.12.2013, payment was conditional upon proper completion and handover of the building. By letter dated 30.10.2014, respondent No. 4 informed the petitioner that the bills were withheld by order of respondent No. 2, Chief Engineer, due to the petitioner's failure to rectify multiple technical defects despite repeated requests. The respondent No. 4, in furtherance thereof, transmitted the project report, wherein a specific observation was recorded concerning the construction of Char Afzal School to the effect that letters had been duly issued to the contractor calling upon him to rectify the defects detected in the construction work. Additionally, the petitioner failed to pay the insurance premium of Tk. 1,00,565/-(including VAT). Additionally, the petitioner did not deposit the required security money of Tk. 12,00,000/-for the project. Hence, the Rule is liable to be discharged.

Learned Counsel Mr. Rafiqul Islam Sohel, appearing on behalf of the petitioner, submitted that upon completion of the construction work, the Assistant Engineer, Education Engineering Department, Lakshmipur, by letter dated 10.06.2013, requested

the Executive Engineer to take necessary steps for preparation and disbursement of the final bill in favour of the petitioner. In continuation thereof, the Executive Engineer, by letter dated 16.06.2013, addressed the Chief Engineer, Education Engineering Department, Dhaka, seeking release of the outstanding dues along with the security deposit and accrued interest.

He further contended that despite such official correspondence, the respondents, with *mala fide* intention, failed and neglected to release the final bill and refund the security deposit with interest, thereby acting without lawful authority.

Learned Counsel also asserted that the completed work was duly handed over to the respondent authority on 25.05.2013, and a Work Completion Certificate was subsequently issued on 10.06.2013, evidencing full completion of the contractual obligations. As such, the petitioner accrued a vested legal right to receive the outstanding payments and invokes the doctrine of legitimate expectation for fair and lawful treatment.

Learned Counsel finally endorsed the Annexures-I and I-1 and mentioned that the residue works had been completed as per the contract, respondents were reluctant to settle the issue with the petitioner, and caused failure to maintain the order of the due process of law; consequently, the Rule is liable to be made absolute.

On the contrary, Mr. Bivuti Tarofder the learned counsel for the respondent No. 2 submitted that the petitioner, in breach of the contractual stipulations, utilized defective materials in the construction work and failed to rectify such defects despite repeated directions. He further contended that the petitioner did not complete the work in its entirety and has already received payment commensurate with the work actually performed. Therefore, the present writ petition, according to the respondents, is an attempt to secure payment for unexecuted work, amounting to unjust enrichment.

The learned Counsel for the respondents further argued that the issues raised by the petitioner involve disputed questions of fact, particularly with regard to the quality and completion of the work, which cannot be adjudicated in the

summary jurisdiction under Article 102 of the Constitution. It is also contended that, in view of Clause 82.3 of the Tender Documents, any dispute relating to payment ought to be resolved through arbitration, and the petitioner, having failed to invoke such alternative remedy, is not entitled to seek relief under the writ jurisdiction. Additionally, reliance is placed on the equitable principle that a litigant seeking equity must come with clean hands, which, according to the respondents, the petitioner has failed to do.

Finally, the learned Counsel submitted that the project handover was not done properly, and a specific observation was recorded concerning the construction of Char Afzal School to the effect that letters had been duly issued to the contractor calling upon him to rectify the defects detected in the construction work. Additionally, the petitioner failed to pay the insurance premium of Tk. 1,00,565/-(including VAT), and the petitioner did not deposit the required security money of Tk. 12,00,000/-(Taka Twelve Lakhs) only for the project. Hence, the Rule is liable to be discharged.

Upon perusal of the writ petition, the affidavit-in-opposition, supplementary affidavits, and the annexures appended thereto, it transpires from Annexure-E & E-1 that the construction work in question was certified to have been completed in all respects on 25.01.2013, and the petitioner placed a letter to the respondent No.2 on 18.08.2024 (Annexure-G) claiming the outstanding bill, and this Court, at the time of issuance of Rule, was pleased to direct the respondents to dispose of the said letter within 1(one) month, thus no compliance found from the part of the respondents. However, the Annexure-H revealed that the petitioner had sent a demand for justice notice to the respondents on 25.08.2024; no result came to light.

Furthermore, from Annexure-I & I-1 of the supplementary affidavit dated 09.03.2026, it appears that the petitioner has completed some works of doors, tables, and benches, etc. on 24.03.2015, and some repairing works on 15.04.2015 respectively, which specifically proved the demands of the respondents' letters as enshrined in Annexure X-1 to X-6 of the affidavit-in-opposition dated 10.02.2026, in respect of non-

completion and defective works as per work order dated 18.03.2009, arising out of the contract for construction of new School Building in frame structure at underserved Union including Civil, Sanitary, Water supply, Electrification, and Manufacturing and supplying of furniture. For the culminating facts of this case, we find that the bill submitted by the petitioner was not admitted at all.

On perusal of the স্মারক নং- নি:প্র:/ইইডি/লক্ষ্মী, জোন/২২, তারিখ: ০১/০৮/২০১৩ ইং (Annexure X-7), it is found that the respondent No.2 sent a letter to the petitioner mentioning, among others, “তাহাড়া উক্ত কাজের বিপরীতে তাহার গ্রহণকৃত নিরাপত্তা জামানত বাবদ ১২,০০,০০০/- টাকা (বার লক্ষ) টাকা জমা প্রদান করেন নাই বিধায় উল্লেখিত টাকা জমা দেওয়ার জন্য পুনরায় বলা হলো। অন্যথায় পরবর্তী সময়ে যেকোন জটিলতার জন্য তিনি ব্যক্তিগত ভাবে দায়ী থাকিবেন।”, and in this respect, no compliance has been provided in this writ petition whether the petitioner had deposited the said amount or not. So, it is obvious to us that there are disputed questions of fact available in this writ petition.

Learned Counsel for the respondents placed a decision of our Apex Court cited in 31 BLD (AD) 1, wherein the Hon’ble

Appellate Division of the Supreme Court of Bangladesh was pleased to hold that-

“65. Considering the facts and circumstances of the case and the legality of the claim of the writ petitioner in this jurisdiction cannot be gone into, which are basically allegations of facts and are not amenable in writ jurisdiction.”

The case in our hand, manifestly disclosed that there are conflicting facts as to the work done by the petitioner, and the claimed amount is not specific, and the alleged bill is not admitted by the respondents, though the petitioner was able to get the certificate of work completion, thus subsequent events made the said certificate under challenge. Now the question is whether the petitioner has the right to get the proportioned bill amount in pursuance of the work done or not.

We prefer to take the simple test: What is reasonable and fair in the circumstances, as the petitioner and respondents developed in consequence of the work advanced under the executed contract between them? In the case of Storer v Manchester City Council, Lord Denning stated:

“The question is not what the parties had in mind, but what a reasonable man would think from their words and conduct.”

At this juncture, under examination of Clause No. 82 of Annexure: A-1 (page number 74 of the writ petition), it is found that there are specific provisions of Arbitration in the following terms:

“82. Settlement of Disputes:

82.1 Amicable Settlement:

(a) The Employer and the Contractor shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

82.2 Adjudication

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82.3 Arbitration:

(a) If the Parties are unable to reach a settlement as per GCC Clause 82.1(a) within twenty-eight (28) days of the first written correspondence on the matter of

disagreement, then either Party may give notice to the other party of its intention to commence arbitration in accordance with GCC Sub-Clause 82.3(b).

(b) The arbitration shall be conducted in accordance with the Arbitration Act (Act No 1 of 2001) of Bangladesh as at present in force and in the place shown in the PCC.”

So, the aforesaid provisions manifest that both parties had the opportunity to prefer the amicable settlement, failing which, to the arbitration, thus the petitioner, without invoking the said simple way to get a remedy, availed this limited scope, having a disputed question of facts. Moreover, the petitioner has the alternative course to resort to the remedy in the Civil Court.

In this context, our Apex Court, in the case of Shamsunnahar Salam and others Vs. Mohammad Wahidur Rahman and others [reported in 51 DLR (AD) 232], wherein held that,

“15. ---, a writ Court cannot and should not decide any disputed question of fact which requires evidence to be taken for settlement. ---.”

From the foregoing discussions and the settled propositions of law, it transpires that the petitioner has, in effect, proceeded to execute the work without adhering to, or duly mitigating, the strict terms and conditions embodied in the work order. Furthermore, the instant writ petition has been instituted in the absence of any admitted or duly verified bill, thereby introducing and necessitating the adjudication of disputed questions of fact, which are ordinarily not amenable to determination in writ jurisdiction.

It is a cardinal principle of law, embodied in the maxim ***actus curiae neminem gravabit***, that an act of the Court shall prejudice no person. Equally well-settled is the doctrine ***ubi jus ibi remedium***, signifying that where a legal right exists, a corresponding legal remedy must also be available for its enforcement. In each of the aforesaid cases, the remedy lies in availing the appropriate forum as prescribed by law.

In view of the above, and in the interest of justice, equity, and fair play, we are of the considered opinion that the ends of justice would be best served by directing both parties to resolve their disputes in accordance with the mechanism prescribed under Clause 82 of the terms of Contract (Annexure–A1 to the writ petition). Accordingly, both parties are hereby directed to initiate and conclude the dispute resolution process within a period of 60 (sixty) days from the date of receipt of a copy of this judgment.

In such circumstances, and considering that both parties are already fully cognizant of the nature, scope, and procedural course of the disputes involved, the requirement of serving a prior notice of 28 (twenty-eight) days, as contemplated under the relevant contractual provision, is hereby dispensed with and treated as sufficiently complied with for the purpose of invoking the said clause.

In view of the preceding facts and circumstances, proposition of law, and upon consideration of the materials on record, this Court finds that no sustainable legal basis has been made out to maintain the Rule. Accordingly, the Rule is

discharged with the above observations and findings, and also directions.

However, there is no order as to costs.

The office is directed to provide a copy of the judgment to the respondent No.2 immediately.

(Abdur Rahman, J)

K.M. Hafizul Alam, J:

I agree.

(K.M. Hafizul Alam, J)