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

Present:

Ms. Justice Kazi Zinat Hoque
And
Ms. Justice Aynun Nahar Siddiqua

Writ Petition No. 16355 of 2024
With
Writ Petition No. 16356 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 :

Bangladesh Finance Limited (formerly known as BD Finance Limited) of 27 Dilkusha Commercial Area, Motijheel, Dhaka and others

.... Petitioners
(In W.P. No.16355of 2024)

Mamun-Ur-Rashid Chowdhury and others

.... Petitioners
(In W.P. No.16356 of 2024)

-VERSUS-

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Finance Bank & Financial Institutions Division of Building No.6(3rd floor), Bangladesh Secretariat, Ramna, Dhaka and others.

..…Respondents

Mr. Shaikh Mohammad Zakir Hossain, Senior Advocate with
Mr. Muhammad Ibrahim Khalil, Advocates

....… For the Petitioners

Mr. Dr. Shahdeen Malik, Senior Advocate with
Mr. Abul Kalam Azad, with
Mr. Md. Tayeb-Ul-Islam Showrov and
Ms. Salma Sultana, Advocates

.... For respondent No.2

Date of Hearing : 22.06.2025, 03.07.2025 and 08.07.2025
Date of Judgment: 16.07.2025

Kazi Zinat Hoque, J :

Since these Writ Petitions involve common factual and legal aspects, they were heard together and the Rules are being disposed of by a single judgment.

In Writ Petition No.16355 of 2024 a Rule Nisi has been issued in the following terms:

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inaction of the respondents in completing the process initiated under the letters dated 23.06.2022 (Annexure-A-A-1) should not be declared to have been done without lawful authority and is of no legal effect and as to why respondents should not be directed to dispose of the petitioners representation dated 11.12.2024 now pending before respondent No.2 (Annexure-D to D-5) and/or pass such other or further order or orders as this court may seem fit and proper."

In Writ Petition No. 16356 of 2024 a Rule Nisi has been issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inaction of the respondents in completing the process initiated under the letters dated 23.06.2022 (Annexure-A-A-2) should not be declared to have been done without lawful authority and is of no legal effect and as to why respondents should not be directed to dispose of the petitioners representation dated 08.12.2024 (Annexure-D-D-2) and/or pass such other or further order or orders as this court may seem fit and proper."

Relevant facts for disposal of the Rules are that respective petitioner has been served with respective show cause notice by the Security and Exchange Commission (hereinafter referred as the Commission) alleging that respective petitioner has been involved with violation of securities laws and as such asked the respective petitioner to appear either personally or through the representative of the respective petitioner on the date fixed for hearing and offer their written replies against the allegation (s) raised (Annexure-A and A-1). Thereafter the respective representative of respective petitioner attended hearing before the Commission on different dates and submitted written replies (Annexure-B series). Respective petitioner categorically denied the allegation made against them. Thereafter, the Commission has neither taken any action against the respective petitioner nor notified the respective petitioner about the outcome of the said personal hearing dated 11.08.2022 and as such the respective petitioner assumed that the explanation offered by the respective petitioner was found by the Commission to be justified and as such no further action would be taken in that regard. Vide সূত্র নং-বিএসইসি/মুখপাত্র/০২/২০২৪/৭৭ dated 10 December, 2024 the Commission has taken decision (Annexure-C-2) to impose penalties upon the various companies and individuals for violation of different provisions of the relevant securities laws and as such the respective petitioner apprehended that the similar action may be taken against them and as such vide letter dated 11 December, 2024 the respective petitioner requested the Chairman, Bangladesh Securities and Exchange Commission not to impose any penalties upon them without hearing. Having received no response, the respective petitioner was constrained to file respective writ petition whereupon Rule Nisi was issued and interim order was passed.

Mr. Shaikh Mohammad Zakir Hossain, learned Senior Advocate appearing with Mr. Muhammad Ibrahim Khalil, learned Advocate representing the petitioners, argued that the show cause notices were issued on 23.06.2022 and the respective petitioners replied immediately after the issuance of the show cause notice and though 29 months have already elapsed no punitive action or any other action has been taken by the Commission and such conduct of the respondents is unreasonable under the principle of Wednesbury unreasonableness. He further argued that the Commission cannot take any action based on fictitious allegations and therefore, a direction should be given so that the respondents do not take punitive action against the petitioners pursuant to the impugned show cause notices (Annexure-A series). He further argued that the impugned show cause notices are non speaking orders and mechanical and they have been issued with mala fide and ulterior purpose. He also argued that the show cause notices themselves being nullity no action can be taken pursuant to such null and void show-cause notices and as such he prayed for making the Rules absolute.

The Rules have been opposed by the Securities and Exchange Commission by filing Affidavit-in-opposition. Dr. Shahdeen Malik, learned Senior Advocate appearing with Mr. Abul Kalam Azad, learned Advocate representing respondent No.2, argued that it is settled principle of law that no writ petition is maintainable against any show cause notice. He further argued that pursuant to the show cause notice the writ petitioners have given their reply and appeared before the Commission. The show cause notices having been acted upon the petitioner are estopped from claiming that the show cause notices are nullity and therefore the Rules are liable to be discharged.

From Annexure-A series it is evident that show cause notice was issued upon respective petitioner for non compliance of securities related laws, by the said show cause notice respective petitioner was requested to appear at hearing personally or through authorized persons on a given date at the Commission premises failing which the Commission shall be constrained to take ex-parte action in this respect. After receiving the show cause notice the respective petitioner replied (Annexure– B series) and also respective petitioner or their representative appeared before the Commission. From Annexure-C-1 it evident that the Commission has taken punitive action against different companies and person for non-compliance of different securities related laws. The petitioners apprehended that such punitive action might be taken by the concerned against that pursuant to the show cause notices as such they filed the writ petition.

The learned Advocate for the petitioners argued that since the respondents have not adjudicated the matter within a reasonable time pursuant to the show cause notice therefore, such action of the respondents are not justified. He referred to the decision of the High Court of Judicature at Bombay In the case of *UPL Limited vs The Union of India and another (Writ Petition No.3063 of 2021*[1]*)*. The High Court of Judicature at Bombay dealt with similar facts wherein actions were not taken by the concerned respondents authority within a reasonable period after the issuance of the show cause notice. Relevant portion of the judgment of High Court of Judicature at Bombay is reproduced below:

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[1] https://indiankanoon.org/doc/133751388/

"We may also observe that there is no material whatsoever on record including in the affidavit that respondent no.2 which in any manner would justify such non-adjudication on the ground that it was not possible for respondent no.2 to adjudicate the show cause notice for justifiable reasons either within a reasonable period and more so, within a period as sub-section (4)(B) of Section 73 would manifest.

In our opinion, even in absence of the provisions of sub-section (4) (B) of Section 73, respondent no.2 could not have acted oblivious to the settled principle of law, that a show cause notice would be required to be adjudicated within a reasonable time depending the facts of each case. However, as observed by us in our decision in Coventry Estates Pvt. Ltd. Versus The Joint Commissioner CGST and Central Excise & Anr. (supra), reasonable time would not be an egregious, unjustified and unexplained inordinate delay. Having perused the reply affidavit, we find that no justification

> whatsoever is given by the Deputy Commissioner in.”

As such Rule in Writ Petition No.3063 of 2021 was made absolute by the High Court of Judicature of Bombay.

In this writ petition during the course of hearing two applications were filed by the petitioners for issuance of supplementary Rules for quashing the show cause notices. The learned senior counsel for the petitioners argued that in writ jurisdiction no relief can be granted unless it is prayed for. In this regard the learned counsel for the petitioners referred our attention to paragraph 5.169 of Constitutional Law of Bangladesh written by famous jurist Mahmudul Islam.

Whether Writ Petition against Show Cause Notice is Maintainable

In the case of Mughal-E-Azam Banauet Complex vs. Federation of Pakistan (2011PTD2260). it was held :

> "6. Interference at the stage of issuance of Show-Cause Notice stultifies and retards the adjudicatory process provided under the relevant law, in this case Ordinance, 2000 read with Sales Tax Act, 1990. This unduly stalls the investigative

machinery of the quasi judicial authorities and hampers discharge of their statutory duties which are to be done with a free hand independent from outside control. The petitioner has an opportunity to place its case before the concerned authority who is competent to look into the factual receipts besides there are elaborate procedures by way of appeal or revision against order passed in such proceedings. The petitioner has already filed its replies to the Show-Cause Notice and the matter is pending adjudication before the concerned authority. 7. Petitioner, however, can invoke the constitutional jurisdiction of this Court, if the Show-Cause Notice is not issued by a competent authority or the liability in the Show Cause Notice is palpably unlawful and without jurisdiction. This is not so in the present case. Show Cause Notice is admittedly issued by a competent authority and its contents do not prima facie, reveal that the liability is ultra vires the law. In fact the allegations raised in the Show-Cause Notices requires factual inquiry

> in order to determine whether the petitioner renders services as Caterers."

In the case of Messrs Maritime Agencies (Pvt.) Ltd. v. Assistant Commissioner-II of SRB and 2 others (2015 PTD 160) it has been held as under:

> 6. The tendency to impugn the show-cause notices issued by the Public Functionaries under taxing statutes, before this Court under Article 199 of the Constitution, and to casually bye-pass the remedy as may be provided under a special Statute is to be discouraged as it tends to render the statutory forums as nugatory. Moreover, if the proceedings initiated under Special Taxing Statutes do not suffer from jurisdictional error or gross illegality the same are required to be responded and resolved before the authority and the forums, provided under the Statute for such purpose, whereas, any departure from such legal procedure will amount to frustrate the proceedings which may be initiated by the public functionaries under the law and will further preempt the decision on merits by the

> authorities and the forums which may be provided under the statute for such purpose. In the instant case a show-cause notice has been issued by the respondent who admittedly has the jurisdiction over the case of the petitioner, wherein, certain queries have been made and the petitioner has-been provided an opportunity to respond to such show-cause. Petitioner is at liberty to file detailed reply and to raise all such legal objection, as raised through instant petition..."

In the case of Union Of India And Another vs Kunisetty Satyanarayana[2] the Supreme Court of India held :

> "It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore

[2] AIR 2007 SUPREME COURT 906

and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a

> party is passed, that the said party can be said to have any grievance."

In the case of M/S Diplomat Garments Pvt. Ltd. vs. The Commissioner of Customs, Customs House, Dhaka and others[3] the High Court Division held:

> "A show-cause notice does not violate any of the fundamental rights guaranteed to citizen by the Constitution of the People's Republic of Bangladesh and as such no Writ Petition is maintainable against a show cause notice."

The High Court Division further held :

> "The Commissioner of Customs is a lawful authority, under the Customs Act, 1969 to take a proceeding against a person against who allegations have been received from the competent authority of violation of provision of the Customs Act, 1969 and evasion of Customs duties. Article 102 of the Constitution is not available to such a person against such a show cause notice."

In the case of Saiful Alam alias Masudul Alam Chowdhury vs. Bangladesh Bank and others

[3] 11BLT(HCD)(2003)303

[4BLC(AD)(1999)180] respondent No.2 (Bangladesh Bank) by a letter dated 12.01.1999 (Annexure-G) forwarded to the petitioner who is a Director of Al-Arafah Islami Bank Ltd. a notice under section 17 of Bank Companies Act, 1999 stating that the petitioners have a business establishment called ABY (Private) Ltd. This concern took loan amounting to Tk Two crore from a Branch of United Commercial Bank Limited (respondent No.3) on 21.03.1991 which was due for repayment on 30.06.1997. The outstanding loan became Tk. 3,82,79,572.53/-. On 21.03.1991 the same concern took a further loan of Tk. 20,00000/- (twenty lakh) as running capital which was due for re-payment on or before 31.12.1995. The outstanding loan amount on this account was Tk. 22,08,442.03. Both the loans have been classified as bad and harmful loans. The petitioner, as a Director of ABY (Private) Ltd. had a moral obligation to repay the said loans and he has promised to repay the loans as well. As such, he was asked to repay the loan within two months in default of which his post as Director of Al-Arafah Islami Bank would fall vacant. The petitioner through his lawyer has replied to the said notice and subsequently filed Writ Petition challenging the aforesaid notices (Annexure-G and G-1) issued under section 17 of the said Act, whereupon the High Court Division issued Rule Nisi and passed order of stay on 08.02.1999. After hearing the High Court Division discharged the Rule. Thereafter Civil Petition for Leave to Appeal No.529 of 1999 was preferred before the Appellate Division. The Appellate Division held:

> "The High Court Division has rightly held that there was no lack of jurisdiction in issuing the show cause notice. We have already held that the show cause notice itself need not contain the details of documents on which the alleged loan of the lender Bank are based. We therefore do not find any substantial reason to consider further by granting leave whether the show cause notice itself was without jurisdiction for not mentioning the documents or documents on which the alleged loans are based. The High Court Division rightly held that the writ petition was premature, because the petitioner did not wait for the decision of the Bangladesh Bank, he having already submitted a written representation to the Bangladesh Bank

> before issuance of the Rule Nisi and 15 days having not intervened in between."

As such the Appellate Division dismissed the Civil Petition for Leave to Appeal.

It is well settled that no writ lies against the issuance of a show-cause notice because such a petition would be considered premature at that stage. A show-cause notice by itself does not create a cause of action, as it is not an adverse order that affects the rights of a party, unless it has been issued by an authority lacking jurisdiction. After receiving the reply or conducting an enquiry, the concerned authority may decide to drop the proceedings or find that the allegations are unsubstantiated. The settled principle is that a writ is maintainable only when legal right of the petitioner has been infringed. Since a show-cause notice does not, in itself, infringe any rights, it is only upon the passing of a final order—imposing a penalty, fine, or otherwise adversely affecting a party—that a genuine grievance arises. Therefore, writ petition against any show cause notice is not maintainable.

In these writ petitions the show cause notices have been issued by the Securities and Exchange Commission under relevant Securities laws. Therefore, the Commission is the competent authority to issue the show cause notice. As such we are of the considered view that these writ petitions challenging show cause notices are not maintainable. Since we have already held that the writ petition is not maintainable against the show cause notice, the applications for issuance of supplementary Rules for quashing the show cause notices are rejected.

In the result the both the Rules are discharged. The Securities and Exchange Commission shall be at liberty to proceed further pursuant to the impugned show cause notices in accordance with law.

Interim orders of stay and direction are recalled and vacated.

There is no order as to costs.

Communicate a copy of this judgment to the concerned at once.

(Kazi Zinat Hoque, J:)

I agree

(Aynun Nahar Siddiqua, J:)

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