

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

WRIT PETITION NO. 6920 OF 2025

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Abaid Monsur

...Petitioner

-Versus-

The Government of the People's Republic of Bangladesh
represented by the Secretary, Road Transport and
Highway Division, Building No.7 Floor No.8, Bangladesh
Secretariat, Dhaka-1000 and others

... Respondents

Mr. Mohammad Shishir Monir with
Mr. Reazur Rahman, Advocates

...For the petitioner

Mr. S. M. Zahurul Islam, Advocate

.....For the respondent No. 2

Mr. Mohammad Osman Chowdhury, D.A.G with
Mr. Akhtar Hossain Md. Abdul Wahab, DAG with
Mr. S.M. Emamul Musfiquir, A.AG with
Ms. Tamanna Sultana, AAG with
Ms. Khandaker Asma Hamid, AAG and
Mr. Imrul Kayes Rana, AAG

....For the respondents

Heard and Judgment on: 25.08.2025

Present:

Mrs. Justice Fatema Najib

-And-

Mr. Justice Md. Hamidur Rahman

Md. Hamidur Rahman, J:

This Rule Nisi at the instance of the Petitioner 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 decisions (uploaded in e-GP portal) passed by the respondent No. 2 Chief Engineer, Roads and Highways Department (RHD) debarring the petitioner's firm namely Abaid Monsur Construction in e-GP portal different periods from 01.02.2024 to 20.01.2027 as mentioned in paragraph No.7 should not be declared to have been issued without lawful authority and is of no legal effect (Annexure-C) and/or such other or further order or orders passed as to this Court may seem fit and proper.”

The relevant facts for disposal of the Rule are that the petitioner is proprietor of Abaid Monsur Construction engaged in the business as a First Class Contractor working with fame and reputation with various Government departments including the Roads and Highway Department. The respondent No.2 without considering the involvement of the petitioner in various department of Government departments circumstances, most arbitrarily debarred the Abaid Monsur petitioner's firm Construction in e-GP portal i.e. debarring from 1) 21.01.2025 to 20.01.2027, ii) 20.11.2024 to 19.05.2025, iii) 20.11.2024 19.05.2025, iv) 14.11.2024 to 13.11.2026, v) 19.11.2024 to 18.11.2026 vi) 06.01.2025 to 05.01.2027 vii) 26.11.2024 to 25.11.2026, viii) 10.01.2025 to 09.07.2025 ix) 09.01.2025 to 08.01.2027 x)

22.05.2024 to 21.05.2026 xi) 29.12.2024 to 28.12.2026 xii) 20.11.2024 to 19.11.2026 xiii) 06.01.2025 to 05.01.2027, xiv) 28.12.2026 xv) 24.12.2024 to 23.12.2026, xvi) 21.01.2025 to 20.01.2027 xvii) 29.12.2024 to 23.12.2024 to 22.12.2026, xviii) 23.12.2024 to 22.12.2026 xix) 15.11.2024 to 14.11.2026 xx) 19.06.2024 to 18.06.2026 xxi) 21.11.2024 to 20.05.2025 xxii) 24.12.2024 to 23.12.2026 xxiii) 15.11.2024 to 14.10.2026 xxiv) 06.05.2024 to 05.05.2026 xxv) 15.11.2024 to 14.11.2026, xxvi) 09.01.2025 to 08.01.2027 xxvii) 24.12.2024 to 23.12.2026, xxviii) 01.02.2024 to 31.01.2026 purchase activities of not only RHD but also all departments of the government of Bangladesh for different period without any jurisdiction being biased from a vested quarter. Such act of the respondent No.2 has vastly affected the firm of the petitioner to be destroyed which is apparent from Annexure-C to the writ petition. The decisions have been uploaded in e-GP system. No written office order has been communicated. Challenging the said decision the petitioner filed the instant writ petition and obtained Rule.

Mr. Md. Shishir Monir, the learned Advocate appearing on behalf of the petitioner submits that by referring Annexure-C to the Writ Petition that most arbitrarily the respondent (RHD) uploaded altogether 28 decisions in the e-GP system and no written office order was communicated.

He submits that the petitioner's firm started business as contractor and supplier in 2017. From the very beginning the petitioner's firm has been providing service with utmost sincerity and care with dignity and full

satisfaction of procuring entity. In the name of the petitioner firm only about 1600 minor work orders have been done since its incorporation in Roads and Highway Department, most of which have been completed and the rest are on-going. The petitioner's firm was never involved in any fraudulent practice. He is the victim of technical errors committed by the persons having access in the management of Tenders Database Management System (TDMS) and Tender and information System (TCIS), Contract TDMS provides tenderer's all information and documents, work experience performed, valuation of works calculation of tender capacity and annual turnover. The information and documents provided by the tenders are uploaded in the database system only after the prior approval of the executive engineer of RHD. So nothing can be uploaded in the database system at the sweet will of the concerned authority.

He further submits that on finding that some fabricated work completion certificates, payment certificates and DMP certificates have been approved in respect of the petitioner's firm and uploaded in the firm's profile of the TDMS and TCIS database system, the petitioner made a representation to the respondents on 31.05.2022, 14.11.2023 and 18.11.2023 informing the fact involved and requesting them to take appropriate steps to delete irrelevant fabricated documents from the TDMS database system.

He also submits that TDMS and TCIS database system was introduced on 31.07.2017 as a case study. Thereafter, the respondent No. 2 published the direction in relation to the use of TDMS and TCIS to evaluate the tender

of RHD vide memo No. 35.01.0000.001.07.003.22.203 dated 31.01.2022. The Maintenance wing of RHD issued a letter dated 12.12.2023 to the respondent No. 3 requesting him to take appropriate measures to eradicate the irrelevancy in TDMS and TCIS.

He next submits that the RHD has initiated a departmental proceedings against some of its executive engineers namely Mohammad Shamim Al Mamun (ID No. 601967), Khandakar Gulam Mustofa (ID No. 602133) and Gaous-Ul-Hassan Maruf (ID No. 602215) alleging that they have manipulated the TDMS by uploading and approving fake certificates.

He then submits that the petitioner begs unconditional apology for the acts for which he has been debarred in e-GP portal and undertakes that the petitioner will never do such things in future. In view of above submissions of learned Advocate for the petitioner that this Court can take lenient view about the matter.

Mr. S. M. Zahurul Islam, learned Advocate appearing for the respondent No.2, the Chief Engineer, Roads and Highways Department has made his submissions supporting the affidavit-in- opposition filed for opposing the rule. He further submits that the petitioner while submitting the Tender Form has attached therewith some work completion certificates and at the time of verification the evaluation committee found that the petitioner has manipulated various date of actual completion in the said certificates while he filled-up the e-GP tender form. The tenderer as per tender document obliged to submit the details of the contracted works as successfully completed during last 5 (five) years from the date of IFT

(Invitation for Tender). However the petitioner in order to gain moors has manipulated various dates in completion certificate which do not reflect the actual date of completion in the certificates submitted with the tender documents and as such, those acts of the petitioner comes within the purview of Rule 127 of the Public Procurement Rules, 2008 for doing fraudulent practice. He further submits that the petitioner has been thus debarred from e-GP Portal for 06 (Six) months to 2 (Two) years, as per the recommendation made by HOPE under rule 127(Kha) and 127(4)(ga) of Public Procurement Rules. 2008 for committing fraudulent practice and as such, the debarment order has become effective on the petitioner in participating in any future tender process. He also submits that the tenderer even have any grievance regarding his ongoing works, then he may file application before the Director General, BPPA (former CPTU) who has to consider such grievances but the petitioner without taking such legal recourse has filed the instant writ petition which is not maintainable under the aforesaid law. He next submits that the respondent No. 3 issued notices upon the writ petitioner under Rule 127(3) of the Public Procurement Rules, 2008 and the petitioner by his reply admitted the facts as of fraud practice he done and thus the said act of the petitioner clearly comes within the definition of fraudulent practice as provided and as such, the procuring entity has rightly debarred the petitioner following the rules 127(4) & (5) of the Public Procurement Rule, 2008. The procuring entity has therefore debarred the petitioner upon complying the provisions as provided under the Public Procurement Rule, 2008 and e-GP Guidelines, 2011, as well. The

clause 1.24.10 of the e-GP system user manual provides that "the procuring entity can debar the tenderer from single tender, package, project, procuring entity, procuring agency/organization and e-GP Portal"; and that the e-GP system has been thus programmed accordingly. The respondent has therefore debarred the writ petitioner from the e-GP Portal by taking the due process of law. More so, Rule 127(2)(Kha) stipulates that - "প্রতারণামূলক কার্য্য অর্থে ক্রয় কার্যক্রম বা চুক্তি বাস্তবায়ন প্রক্রিয়ায় কোন সিদ্ধান্তকে প্রভাবিত করিবার জন্য কোন ব্যক্তি কর্তৃক কোন মিথ্যা বিবৃতি প্রদান যা অসাধুভাবে কোন তথ্য গোপন করা বা চুক্তির মৌলিক শর্ত ভঙ্গ করা বুঝাইবে।"

That since the writ petitioner manipulated the completion dates of works which are actually happened beyond the certificates as submitted while filling up the e-GP tender form to get the work order in favour of the petitioner and that he has done for the purpose of depriving the other tenderers and as such, the record shows that the petitioner has made misrepresentation in order to influence the decision of the respondents to get the tender work in its favour, even by depriving the other participants which thus amounts to be as fraudulent practice he has done. He also submits that the petitioner has manipulated various dates to his work completion certificates while filling up the e-GP tender form who in order to get more score has manipulated the above dates in the works completion certificates which thus certainly to be treated as fraudulent practice as per rule 127 of the Public Procurement Rules, 2008. The learned Advocate more so argues that the schedule II of the Public Procurement Rules, 2008 even provides the time frame in forming the review committee for

submitting a report and of recommendation of the said committee but the debarment process has been being done through e-GP system which since a automated e-GP system and has been programmed following the e-GP Guideline and that as per Rule 128(2) of the Public Procurement Rules, 2008 provides that the e-GP Guideline shall prevail in case of conflict arises between e-GP Guideline and the Public Procurement Rules and in that case, the time frame as per schedule all of Public Procurement Rules, 2008 is not mandatory under the e-GP system as per e-GP guideline provided. Even then, since the debarment process has been completed following the e GP system and thus the HOPE was able to take the decision to debar the writ petitioner, since the e-GP System allowed the procuring authority to complete the debarment process in such way and thus the question of time frame, as per schedule II of the Public Procurement Rules, 2008 will not at all come to play in the cases in hands with regard to these writ petition.

We have heard the learned Advocates and have given our anxious consideration to their submissions placed and to appreciate the same, we have gone through the materials on record; particularly the annexures as annexed with the writ petition and with the affidavit-in-opposition as well. The learned Advocate for the petitioner in support of his last submission has referred before us one reported and two unreported Judgments wherein the Division Bench of this Court has modified the debarment order of the respective petitioners holding that those debarment orders were passed disproportionately and also considering the minor mistake occurred at the instance of JV partner. In the case in hand, the present petitioner did

not commit any fault but due to TDMS and TCIS system and a departmental proceeding is pending against the engineer. But that plea of the petitioner has not been taken into consideration by the respondents and thus the said mistake as they shown comes within the purview of section 64 of the Public Procurement Act, 2006 as well as Rule 127(2) of the Public Procurement Rules, 2008.

The Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 162 of 2025 held that-

“The period of debarment of the petitioner's firm from participating in the purchase of all department of the government of Bangladesh shall be deemed to have been served out.”

The learned Advocate for the respondent No. 3 to that extent cases submits that there has been three hundred marks before the evaluation committee to decide the tender process in making the tenderer responsive by the technical committee and to that end, in the case in hand, the present petitioner to make him responsive has shown some manipulated dates of completion of his earlier works about to get the tender work in his favour, even by depriving the other participants. However, since the debarment orders have been passed in a disproportionate manner and that at the end of the day, the petitioner being apologies for the mistake happened and as such, for ends of justice he seeks for giving him, a chance to be cautious in future and thereby prays for modifying the debarment order up to the period as the petitioner by this time suffered.

The record shows that the debarment orders were communicated through e-GP portal altogether 28 decisions and debarred petitioner in e-GP Portal different periods from 01.02.2024 to 20.01.2027 and that have been continued till date, from which it appears to us that the petitioner has been suffered a lot, by this time, as he has been debarred by the impugned orders upto more than two years from whole e-GP Portal in different cases. Upon taking all such materials on record in our consideration and the petitioner's sufferings and at the end of the day the petitioner apologies for the minor mistakes happened and thereby undertakes to be very cautious in future and as such, to give him a chance with caution to realize himself, we are inclined to dispose of the above rules modifying by the order of debarment up to the period as the petitioner, by this time, suffered upon commuting the same.

In view of the decision passed by the Appellate Division, we have taken a lenient view above and therefore inclined to dispose of the rule as issued in the above writ petition by modifying the debarment upto the period which the petitioner by this time suffered and therefore held free the petitioner from debarment as made above from today who is now at liberty to attend in any tender process in the e-GP Portal as he desire, if he is not otherwise disqualified and/or is found competent and eligible to participate in the next tender process in coming days. With the above observation and direction the instant Rule is disposed of without any order as to cost.

In the result, the Rule is disposed of without any order as to costs.

Let a copy of this judgment be transmitted immediately to the respondents for information and necessary action.

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(Md. Hamidur Rahman)

Fatema Najib, J:

I agree.

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(Fatema Najib)