

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present:

**Mrs. Justice Fatema Najib
and**

Mr. Justice Md. Hamidur Rahman

Writ Petition No. 9508 of 2025

In the matter of:

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

In the matter of:

Tapan Kumar Sarkar and others

---Petitioners.

-Versus-

Government of the People's Republic of
Bangladesh, represented by the Secretary,
Ministry of Commerce, Bangladesh
Secretariat, Dhaka-1000 and others.

---Respondents.

Mr. Mohammad Shishir Manir, Advocate.

----For the petitioners.

Mr. Taufiq Anwar Chowdhury, Advocate

---For the respondent No. 1.

Mr. Akhtar Hossain Md. Abdul Wahab,

DAG with

Mr. S.M Emamul Musfiqur, AAG with

Ms. Tamanna Sultana, AAG with

Ms. Khandaker Asma Hamid, AAG with

Mr. Imrul Kayes Rana, AAG

....For the respondents.

Heard on: 30.07.2025 and

Judgment on: 20.08.2025

Md. Hamidur Rahman, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh Rule was 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 to reconstitute the Election Board and Election Appeal Board of Bangladesh Live and Chilled Food Exporters Association (BLCFEA) despite the Memo No. 26.00.0000.000.157.33.0031.09.144 dated 18.05.2025 issued by Respondent No.3 should not be declared without lawful authority and is of no legal effect and also as to why the respondents should not be directed to reconstitute the Election Board and Election Appeal Board of Bangladesh Live and Chilled Food Exporters Association (BLCFEA) in compliance the Memo No. 26.00.0000.000.157. 33.0031.09.144 dated 18.05.2025 issued by Respondent No. 3 and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Facts necessary for disposal of the Rule Nisi in short are that the Bangladesh Live and Chilled Food Exporters Association (hereinafter mentioned as 'the Association') was registered under section 28 of the Companies Act, 1994, having Trade Organization Registration No. 750 dated 14.10.2010. The Association has been operating as a trade organization under the laws of Bangladesh. On 05.02.2025, Respondent No. 03, namely the Director General of the Trade Organization, Ministry of Commerce, by virtue of the powers vested under Section 17 of the বাণিজ্য সংগঠন আইন, ২০২২ and in

view of the ongoing unrest and failure of proper governance, appointed an Administrator to the Association vide Memo No. 26.00.0000.157.33.031.09.09 dated 05.02.2025. On 19.04.2025, the Respondent No. 06 i.e. the Administrator of the association, constituted Election Board and Election Appeal Board under Rule 14 of বাণিজ্য সংগঠন নীতিমালা ১৯৯৪ vide Memo No. বিএলসিএফইএ/নিঃ২০২৫-২০২৭/০১ and বিএলসিএফইএ/নিঃ ২০২৫-২০২৭/০২. On 23.04.2025, the Election Board issued the schedule of the election, election circular, and election rules for the years 2025-2027. On 23.04.2025, general members of the association, including the petitioners filed an appeal under section 24 of the বাণিজ্য সংগঠন আইন, ২০২২, before the Secretary, Ministry of Commerce, i.e. Respondent No. 01 and the Director General, Trade Organization, Ministry of Commerce i.e. Respondent No. 3.

On several occasions, the general members of the association attempted to pay their annual membership fees to the Administrator. However, due to the Administrator's lack of cooperation, they were unable to do so. Subsequently, on 05.05.2025 and 06.05.2025, a number of association members, including some of the petitioners, paid their membership fees via pay orders issued by various banks. On 06.03.2025, the petitioners, along with several other members of the association, sent letters to Respondent Nos. 1 and 3, stating that Respondent No. 6 had neither

accepted their membership fees nor facilitated the submission process, and that they had faced multiple obstructions while attempting to submit the fees. On 12.05.2025, Respondent No. 06 vide Memo No. 26.00.0000.000.157.33.0031.09.141 dated 12.05.2025 set the date for hearing regarding the appeal of the petitioners and the general members of the association on 14.05.2025.

That on 14.05.2025, the appeal was heard by the Director General, Trade Organization i.e. Respondent No. 3, in presence of the lawyers of the petitioners and other officials connected to the matters. Upon hearing, on 18.05.2025, the Respondent No. 03 issued Memo No. 26.00.0000.000.157.33.0031.09.144 dated 18.05.2025 stating that the Administrator of the Association i.e. Respondent No. 6 would reconstitute the Election Board and Election Appeal Board in consultancy with the Director General, Trade Organization i.e. Respondent No. 03 in accordance with section 15 and 18 of the বাণিজ্য সংগঠন আইন, ২০২২. The Trade Organization Wing-1 of the Ministry of Commerce, vide notice dated 25.08.2022, directed that, henceforth, all matters pertaining to the activities of the administrator appointed from the Trade Organization Sub-Division- including the constitution of the Election Board and the Election Period Board, in coordination with the designated officers for conducting the election process, as well as the nomination of members or employees of the team constituted for the election- shall

be undertaken and supervised by the Trade Organization Sub-Division, Trade Organization-1 Branch, until further orders are issued.

That despite of issuance of Memo No. 26.00.0000.000.157.33.0031.09.144 dated 18.05.2025 by Respondent No. 3 regarding the reconstitution of the Election Board and the Election Appeal Board, the existing Election Board continued to carry out its activities in accordance with the Election Schedule dated 23.04. 2025. On 21.05.2025, the Election Board published primary voter list for the year 2025-26 and 2026-27-election. On 27.05.2025, the petitioners sent separate letters to Respondent Nos. 1, 2, and 3, requesting the reconstitution of the Election Board and the Election Appeal Board, and for the initiation of a fresh election process. On 28.05.2025, the petitioners served a legal notice upon the respondents, demanding the immediate suspension of all election-related activities in order to ensure compliance with Memo No 26.00.0000.000.157.13.0031.09.144 dated 18.05.2025, The petitioners by the said notice further demanded the reconstitution of the Election Board and the Election Appeal Board and the declaration of all actions undertaken by the existing Election Board as null and void.

Under such circumstances the Petitioners have challenged the inaction of the Respondents to reconstitute the Election Board and Election Appeal Board of Bangladesh Live and Chilled Food

Exporters Association (BLCFEA) despite the Memo No. 26.00.0000.000. 157.33.0031.09.144 dated 18.05.2025 issued by Respondent No. 3 and sought for direction upon the Respondents to reconstitute the Election Board and Election Appeal Board of Bangladesh Live and Chilled Food Exporters Association (BLCFEA) despite the Memo No. 26.00.0000.000.157.33.0031.09.144 dated 18.05.2025 issued by Respondent No. 3 and obtained Rule and interim order staying all further activities of the Election Board and Election Appellate Board by order dated 02.06.2025 .

The respondent No.1 contested the Rule by filing an affidavit-in-opposition denying the material facts as stated in the writ petition stating inter alia that none of the Writ Petitioners are voters of the association since they were defaulted more than 02 (two) yeas. As per Article 07 of the Articles of BLCFEA the memberships of the BLCFEA shall be ceased if any member failed to pay the subscription fees for 02 (two) years. In fact, the Writ Petitioners did not pay their subscription fees upto 10.05.2025 as per Election Schedule dated 23.04.2025 rather by suppressing the material facts they have annexed some pay orders dated 05.05.2025 and 06.05.2025 as Annexure- F-F/18 which are false and fabricated. The said Fee slips are issued in the name of "Alamgir" and "Md. Shahidul Karim" who are not the respective members of the Association. It is stated that the Director General, Trade Organization, Ministry of Commerce on 14.05.2025 heard the Appeals filed on 23.04.2025 and 27.04.2025

under section 24 of the বাণিজ্য সংগঠন আইন, ২০২২ and the said Director General, Trade Organization, Ministry of Commerce and after hearing of the parties vide Memo No. 26.00.0000.000.157.33.0031.09.144 dated 18.05.2025 and Memo No. 26.00.0000.000.157.33.0031.09.148 dated 19.05.2025 concluded that Election Board and the Election appeal Board shall be reconstituted in consultation with the Director General, Administrator and member of the Association. In fact, after commencement of গঠন বিধিমালা, ২০২০ dated 20.05.2025 published vide Gazette Notification, there is no requirement for constitution of an Election Board and an Election Appeal Board from বাণিজ্য সংগঠন অনুবিভাগ এর বাণিজ্য সংগঠন-১ শাখা Under section 20 of the said বাণিজ্য সংগঠন বিধিমালা, ২০২৫ only empowered to constitute of Election Board and Election Appeal Board headed by 01(one) Chairman and 02(two) Members and none of existing members of Executive Committee, Candidates, Nominees and Supporters can be the Chairman and the Member of an Election Board and an Election Appeal Board. Moreover, there is no requirement of appointment of Deputy Secretary, Ministry of Commerce for constitution of an Election Board and an Election Appeal Board of any Association. Due to change of Regulation, there is no scope for re-constitution of an Election Board and an Election Appeal Board.

The Election Board vide Memo No. বিএলসিফইএ/ নির্বাচন/২০২৫/০৪ dated 21.05.2025 and Memo No. বিএলসিফইএ/ নির্বাচন/২০২৫/০৪ dated 03.06.2026 published the Voter lists of the Association. None of the Writ Petitioners are the voters of the Association (except Md. Mokhlesur Rahman, Proprietor of M/S. R.S International, Writ Petitioner No. 03). Further, the Election Board on 03.06.2025 modified the Election Schedule for holding the Board of Director's election of the Association on 15.07.2025. It is further stated that on 27.05.2025 some outsiders who are not voters of the Association issued a letter to the office of the Respondent No. 01 for reconstitution of the Election Board and the Election Appeal Board before exhausting the Arbitration Tribunal constituted under section 20 of the বাণিজ্য সংগঠন আইন, ২০২২. Section 20 of the বাণিজ্য সংগঠন আইন, ২০২২ completely ousted the Jurisdiction of the Hon'ble High Court Division to interfere in the election of a private Association and therefore, the Petitioners should prefer Arbitration first. The aggrieved party of an Association (if voter) must be exhausted his remedies by invoking Arbitration Tribunal.

The Administrator vide Memo No. বিএলসিফইএ/ ০১/ নির্বাচন/২০২৫/৩৪ dated 02.06.2025 issued a letter to the Ministry of Commerce requesting for appointment of 2 (Two) officials for supervising the Election of the Association. The Petitioners filed the Writ Petition without observing the instant letter dated 02.06.2025.

That section 35 of the বাণিজ্য সংগঠন বিধিমালা, ২০২০ specifically stated that a member of the Trade Association aggrieved by any decision of the Administrator must approach first to the Director General then to the Ministry of Commerce. Since, none of the Petitioners approached to the Director General and then Director General to Secretary of the Ministry of Commerce, therefore, the very Writ Petition is not maintainable.

The office of the Bangladesh Bank vide Memo No. এফইপিডি (রপ্তানি নীতি) ২৯১ (২৪)/২০২৩-২২৩৫ dated 27.04.2023 issued a letter to the Managing Director and CEO of the AB Bank stating inter alia that 14 proprietorships including Dibho Enterprise, S.R Traders, Kamal Trading Corporation and Mariam Export Import issued undervalued Freight Certificate by evading of taka 21.40 Lac while exporting live fish, crab and Eel Fish. The Petitioners are prejudicial for the interest of the Association and they are trying to postpone the Election of the Association with ulterior motive. With these submissions he prays to discharge the rule.

Mr. Mohammad Shishir Manir, the learned Advocate appears for the petitioner submits that the respondents acted arbitrarily in not reconstituting Election Board and Election Appellate Board in accordance with law and prays for making the rule absolute.

On the other hand, learned Additional Attorney General Anik R. Haque appears on behalf of the respondent submits that the

election dated 10/07/2025 had already been expired. In order to secure fair election they have no objection if the Court directs to reconstitute the members of Election Board and Election Appellate Board.

In view of the above submission of the learned Additional Attorney General, we are of the view that the respondents are hereby directed to reconstitute Election Board and Election Appellate Board in accordance with law within 30 days from the date of receipt a copy of this judgment.

In the result the Rule is disposed of with the above directions.

The order of stay granted earlier by this Court is hereby vacated.

Let a copy of the judgment and order be communicated at once to all concerned.

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(Md. Hamidur Rahman, J)

Fatema Najib, J:

I agree.

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(Fatema Najib, J)