IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 9653 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:

Md. Akram Hossain

.... Petitioners

-versus-

Government of the People's Republic of Bangladesh and others

.... Respondents

Mr. Md. Shahadat Alam, Advocate

... for the petitioner

Mr. S.M. Zahurul Islam

...for the respondent No.2.

Heard on 15.01.2026 & 03.02.2026

Judgment on: 10.2.2026

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 respondents should not be directed to make rest of the payments with interest to the petitioner for the construction/development works done by the petitioner under different works orders at different works done by the petitioner under different works orders at different K.M. of Jamalpur Dhanua Kamalpur Rowmari, Jamalpur islampur Dewangonj and Bhuapur islampur Dewangonj and Bhuapur islampur Dewangonj and Bhuapur Tarakkandi road under Jamalpur Road Division and/or such order or further orders as to this Court may seem fit and proper."*

The facts leading to the issuance of this Rule Nisi in brief are that: the petitioner is the enlisted 1st Class Contractor of the Roads and Highways Department. The respondent No.5 for the year 2012-2013 issued Tender Notice No. 05/LT/EE/JRD/2012-2013 for the maintenance of road pavement carpeting and seal coat of Jamalpur-Dhanuakamapur-Rowmari Road under Jamalpur Road Division. The petitioner participated in the said tender process and, being the lowest bidder work order dated 22.11.2012 has been issued in favor of the petitioner. The respondent No.5 also issued Tender Notice No. 02/LTM/EE/JRD/2012-13 for maintenance of Jamalpur-Islampur-Dewagonj under Jamalpur Road Division for the year 2012-13, and the petitioner participated in the said tender process and, being the lowest bidder work order dated 21.1.2013 has been issued in favour of the petitioner. The respondent again issued Tender Notice No. 04/LTM/EE/JRD/2012-13 for maintenance of the Bhuapur-Tarakandi road under Jamalpur Road Division for the year

2012-13, and the petitioner, being the lowest bidder, got a work order dated 29.4.2013.

Thereafter, the petitioner duly completed the said maintenance works as per Tender Notice No. 05/LT/EE/JRD/2012-2013, and the quoted price is Tk. 94,05,500/- and as per the report of the measurement book, the petitioner executed the work valued at Tk. 73,79,000/- and the respondent so far paid Tk. 60,37,000/-only and then Tk. 13,42,000/-only remained unpaid for the works done by the petitioner.

Thereafter, the petitioner in due course completed maintenance work as per tender Notice No. 02/LTM/EE/JRD/2012-2013, and the quoted price is Tk. 47,57,000/- and as per the measurement book report, the petitioner executed the work valued at Tk. 47,30,000/- and the respondent so far paid Tk. 33,00,000/- and hence Tk.

14,30,000/-only remains unpaid for the works done by the petitioner.

Thereafter, the petitioner completed maintenance work in due course of the Tender Notice No. 04/LTM/EE/JRD/2012-2013, and the quoted price is Tk. 25,85,000/-, and as per the measurement book's report, the petitioner executed the work valued at Tk. 25,11,000/- and the respondent has so far paid Tk. 19,96,000/- and hence Tk. 05,15,000/- remains unpaid for the works done by the petitioner.

However, for the above three work orders, the outstanding bill is Tk. 32,87,000/- remains unpaid. The petitioner, on several occasions, made representations requesting the respondents to pay the outstanding bills. In such a situation, the respondent No. 4, by its letter dated 17/04/2018, requested the respondent No.3 to take effective steps to pay the outstanding bills of the petitioner. Moreso, the respondents, on several occasions, by their letter dated

22/12/2021, 17/01/2023, 24/01/2023, and 07/03/2023, admitted the outstanding bills of the petitioner and emphasized paying the outstanding bills to the petitioner, and after a long lapse of time, the respondents have failed to pay the same, and then, having no alternative, the petitioner invoked this forum.

Conversely, the Respondent No.2 made an appearance by filing an Affidavit-in-opposition denying the material facts, stating inter alia that after proper scrutiny and calculation of the bills, the authority of the Roads and Highways Department, and subject to the availability of the fund, the Respondents will settle the financial dispute with the petitioner. Moreover, the claims of the petitioner have been waived as well as extinguished as per the provisions of the Limitation Act. The subject matter of the writ petition relates to a matter involving a contractual obligation. The subject matter of the writ petition is a commercial contract, and as such, the writ petition is not maintainable.

Mr. M. Ashraf Ali along with Mr. Md. Shahadat Alam, the learned Counsels, appearing for the petitioner submits that the outstanding bills are admitted amount which are also a statutory payment and as such the respondents should pay the arrear bills as claimed by the petitioner and such withholding the payment is liable to be declared to have been made without lawful authority and is of no legal effect. Learned Counsel has further submitted that respondents are duty-bound under law to pay the admitted bill amount, and as such, withholding the payment caused huge losses to the petitioner, and he again submits that the impugned inaction of the respondents without any proper justification is a colorable exercise of the administrative power, which is liable to be declared illegal and without jurisdiction. Learned Counsel has further submitted that in a similar situation, the High Court Division of the Supreme Court of Bangladesh in Writ petition No. 3257 of 2019 made the Rule absolute, and in Civil Petition for Leave to Appeal No. 952 of 2011, the Appellate Division also affirmed the same view.

Mr. Md. S.M. Zahurul Islam, the learned Counsel appearing on behalf of the respondent No.2, submitted that the writ petition is misleading, misconceived, and manifestly out of context, and as such, the Rule is liable to be discharged. Learned Counsel has further coped that in the Particular Conditions of Contract (PCC), there is no provision to pay interest due to delayed payment, and the petitioner's claim is beyond the terms and conditions of the contract. Learned Counsel has further submitted that as per Limitation Act, the writ petitioner without filing money suit within the stipulated time of 3 years before the civil court filed the instant writ petition that the suit for which no period of limitation is provided in the schedule of the Limitation Act, the period of limitation is 6 years which means that law does not permit indefinite period for claiming a right so, as per the said principle of limitation the right of the petitioner to claim has been waved as well as extinguished, and the petitioner has no legal grievance to be redressed, consequently Rule is liable to be discharged.

Learned Deputy Attorney General made an appearance and submitted that it is a settled matter so far, and the bill is admitted by the respondents, as revealed from their several letters.

We have heard the learned Counsels of both parties and the learned Deputy Attorney General for Bangladesh, and also perused the writ petition, affidavit-in-opposition, and all annexures thereto.

On sifting the contents of Annexures D, E, and F, it is found that the tendered work orders have been issued in favor of the petitioner. Annexure-G revealed that the petitioner duly completed the work, and the respondent No.2 paid most of the bill, except the due amount of 32.87 lacks only. Admittedly, Respondent No.5 wrote several letters (Annexures- H, H1, and H2) to get the due amount to the Additional Chief Engineer, but no result came to light. Thereafter, the petitioner unsuccessfully sent several representations (Annexures I to I-5) to the Secretary, Roads and Highways, Bangladesh Secretariat, Dhaka, and the Chief Engineer concerned. The petitioner also annexed a judgment on a similar footing of the High Court Division, Supreme Court of Bangladesh, where their Lordships in writ petition No. 3297 of 2019 opined that-

"It appears further from Clause 21.10 of the sondes documents that there is a provision for payment of compensation

in case of delayed payment. The provision of Clause 21.1(b) reads as follows:

'21. Compensation Events

21.1 The following shall be Compensation Events

(u)...

(b) If the payment is delayed pursuant to Clause 25.1.

Clause 25.1 reads as follows:

25.1 The Employer shall pay the Contractor the amounts certified by the Engineer within twenty-eight (28) days of the date of each certificate. All payments shall be made in Bangladesh Taka.'

As per Clauses 21 and 25.1, the petitioner (contractor) is entitled to compensation for delayed payment to be counted after 28 (twenty-eight) days of issuance of the payment certificate.

Since it has been declared in Clauses 21 and 25.1 of the tender document that in case of delayed payment, the contractor *shall be entitled to compensation on the unpaid bill, the respondents are barred by the promissory estopples to say that the petitioner shall not be entitled to compensation on the unpaid bill or in delayed payment. In such facts and circumstances, we find merit in the Rule."*

However, in the case at hand, we find that the petitioner claimed an unpaid bill with interest, and at the time of issuance of Rule Nisi, this Court did issue Rule calling upon the respondents to show cause as to why the respondents should not be directed to make rest of the payments with interest to the petitioner for the construction/development works done by the petitioner. After a scrutiny of the representations (Annexures I to I-5) and the demand justice notice (Annexure-K) of the petitioner, nowhere does it reveal the existence of a demand for interests on unpaid bills, and even the learned Counsel for the petitioner candidly conceded on hearing that they forgo the demand for interests on unpaid bills for the betterment of getting it urgently.

Considering the facts and circumstances, submissions of the learned Counsels of both sides, it is found that the due bills are admitted. There is no question arising out of the completion of the work. The petitioner, on several occasions, claimed the admitted unpaid bills through numerous representations, and he has incurred huge financial loss due to the outstanding bills, which the respondents failed to pay, having a statutory obligation on their part. Though the petitioner did not claim any interest upon the unpaid amount except in the writ petition, he has accrued a legitimate claim in respect of the unpaid bills. The petitioner waived his right to have payment with interest; consequently, we are of the view that the petitioner is not entitled to any interest, so the respondents are liable to pay the admitted due amount.

Foregoing discussions and observations show us that the Rule has substance in part relating to admitted unpaid bills; consequently, the Rule is made absolute in part.

The respondents are hereby directed to pay the outstanding bills to the tune of BDT 32,87,000/= (Thirty-Two Lakhs and Eighty-Seven Thousand) only to the petitioner within 60 (Sixty) days from the date of receipt of a certified copy of this judgment, failing which the petitioner shall be entitled to get compensation as per the prevailing rate of bank loan interest on admitted amount of unpaid bills from the expiry of the said stipulated time.

There is no order as to costs.

The office is directed to communicate the certified copy of this judgment to the parties concerned.

The Court doth duly acknowledge and appreciate the efforts of the learned Counsels representing both parties.

(Abdur Rahman, J)

K.M. Hafizul Alam, J:

I agree.

(K.M. Hafizul Alam, J)