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

Present:

Mr. Justice Zafar Ahmed

WRIT PETITION NO. 6088 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:

Bangladesh Jubo Arthanitibid Forum, a philanthropic organisation
...Petitioner

-Versus-

The Government of Bangladesh and others
.....Respondents

Mr. Ahsanul Karim, with
Mr. Syed Mamum Mahbub, Senior Advocates,
and
Mr. Md. Anwar Hossen, Advocate
...for the petitioner

Mr. Mohammad Arshadur Rouf, Attorney General (In-Charge), with
Mr. Aneek R Haque, Additional Attorney General
...for the respondent No. 1

Mr. Md. Helal Uddin, with
Mr. Md. Anisul Hasan, and
Ms. Sajeda Begum, Advocates
...for the respondent No. 2

Mr. Nasir Uddin Ashim, Senior Advocate, with
Mr. Saleh Ahmed Somrat, Advocate
...for the applicant for addition of party

Mr. Saqeb Mahbub, Advocate
...for the applicant for addition of party

Mr. Mohammad Ahasan, with
Mr. Elyas Ali Mondal, Advocates
...for the applicant for addition of party

Heard on: 05.01.2026, 08.01.2026, 13.01.2026, 22.01.2026, 25.01.2026, 26.01.2026, 27.01.2026 and 28.01.2026
Judgment on : 29.01.2026

Zafar Ahmed, J.

Earlier a Division Bench of this Court, vide judgment and order dated 14.12.2025 passed a split verdict in the matter. Thereafter, under Rule 18 of Chapter XIA of the Supreme court of Bangladesh (High Court Division) Rules, 1973, the Hon'ble Chief Justice, vide order dated 15.12.2025 sent the matter to the Third Bench presided over by Zafar Ahmed, J. for hearing and disposal.

The writ petition has been filed in the form of public interest litigation. Bangladesh Jubo Arthanitibid Forum, describing itself as a philanthropic organisation registered under the relevant laws of Bangladesh, represented by its president Mr. Mirza Walid Hossain is the petitioner.

Respondent No. 1 is the Government of Bangladesh. Respondent No. 2 is the Chittagong Port Authority (in short, the 'CPA'), and respondent No. 3 is the Public Private Partnership Authority (PPPA), a statutory body established under the Bangladesh Public-Private Partnership Act, 2015. Pro-forma respondent No. 4 is the DP World FZE (DPW), which is a Dubai based state-owned entity of the Government of Dubai.

The Rule *Nisi* issued on 30.04.2025 has two parts. In the first part, the ongoing process taken by the CPA in awarding the contract to a foreign company to operate the existing "New Mooring Container Terminal (NCT), Chattogram" disallowing the local Container Terminal handling operators in violation of "Bangladesh Public-Private Partnership Act, 2015" (in short, the 'PPP Act, 2015') and the "Policy for Implementing PPP Projects through Government to Government (G2G) Partnership, 2017" (in short, the 'G2G Policy, 2017') has been challenged as being without lawful authority and is of no legal effect.

In the second part of the Rule, the petitioner has prayed for a direction upon the respondents to ensure fair and competitive public bidding under the PPP Act, 2015 and the G2G Policy, 2017 before appointing any container terminal handling operators to operate the NCT.

It is apparent that the 1st part of the Rule is in the form of writ of *certiorari*. Writ of *certiorari* is intended to prevent public functionaries from exceeding their power. This form of writ is issued when the act or proceeding has been completed. It is clear from the terms of the 1st part of the Rule that the process in question is ongoing and contract has not yet been awarded. Therefore, the writ

petition is, *prima facie*, premature. However, if the petitioner can show that the act done or proceeding taken even though finality has not yet been reached but the act done so far is without lawful authority or without jurisdiction or suffers from lack of jurisdiction or excess of jurisdiction and of no legal effect, the writ petition is maintainable. It is the contention of Mr. Ahsanul Karim, learned Senior Advocate appearing for the petitioner, that the writ petition is not premature on the ground that the actions taken so far by the concerned respondents are without lawful authority and in violation of the law. In the 2nd part of the Rule, the petitioner has prayed for a direction in the form of writ of *mandamus* which is issued to compel a public functionary to do what he is under a legal duty to do when he is refusing to do it.

In my judgment, the authentic English text of the PPP Act, 2015, published by the Government and also the original Bangla text, whenever necessary, has been used.

The preamble to the PPP Act, 2015 states:

> "WHEREAS it expedient and necessary to provide for the legal framework for creation of public-private partnerships by involving private sector participation along with public sector and attracting local and foreign investment upon connecting Bangladesh with the global economy to ensure extensive investment in infrastructure in different sectors in order to fulfill the basic needs of the

> people of Bangladesh and to expedite socio-economic development in the interest of improvement of their living standard, and for establishment of a reliable Authority in this behalf and the matters ancillary thereto. THEREFORE, it is hereby enacted as follows....".

Now, I turn to the various relevant definitions given in the PPP Act, 2015. "**PPP Project**" means any public sector project which is undertaken for implementation through public-private partnership [Section 2(11)]. "**Public-Private Partnership**" or "**Partnership**" or "**PPP**" means a PPP contractual arrangement between the contracting authority and any private partner pursuant to which the private partner, *inter alia*, assumes the obligation/responsibility for carrying out any public work or providing any service on behalf of the contracting authority [Section 2(27)(a)]. "**Partnership Contract**" or "**PPP Contract**" means any contract signed between the contracting authority and the project company pursuant to Section 23 of the Act for the establishment of the public-private partnership [Section 2(2)]. Admittedly, awarding the 'PPP Contract', which is the finality in the matter, has not yet been done. "**Private Partner**" means a party to the PPP contract other than the contracting authority, and shall also include the project company or its equity provider [Section 2(21)]. "**Private Organization**" means any natural person or any local or foreign company, association, legal entity, group of individuals, consortium, foundation or trust [Section 2(22)].

The G2G Policy, 2017 was made in exercise of the powers conferred under Section 9(1)(a) of the PPP Act, 2015. The objective of the Policy, 2017 as stated in Article 3.2 runs as follows:

> 3.2 The Policy provides the framework for engagement and modality for delivery of the PPP Projects to be undertaken through a G2G Partnership whereby the implementation will be carried out with the support of other Government and executed through their state owned or private sector entities.

"**G2G Partnership**" means the arrangement as set out under the Policy for GoB [Government of Bangladesh] to enter into a partnership with other Government to develop and implement PPP Projects [Art. 4.1(v)]. "**G2G Framework Agreement/ Memorandum of Understanding**" means an agreement entered into by the GoB with other Government on a bilateral basis which provides the procedural framework for engagement and the modality for delivery of PPP Projects to be undertaken on the basis of the Policy [Art. 4.1(vi)]. "**Investor**" means any public or private legal entity which is selected by the other Government to enter into a PPP Contract with the Contracting Authority on the basis of the terms and conditions set out in the G2G Framework Agreement/Memorandum of Understanding [Art. 4.1(vii)].

On 17.02.2019, a Memorandum of Understanding (MoU) was entered into between the Government of Bangladesh (GoB) through its Economic Relations Division (ERD) [as per Article 6.3 of the G2G Policy, 2017] and the Government of Dubai (GoD). The participants described in the said MoU are GoD represented by the DP World FZE (DPW) and the Public Private Partnership Authority (PPPA) of Bangladesh. The areas of cooperation between the participants under clause 2.1 of the MoU included PPP project identification, development, implementation, management; and discussions on any matters necessary for realization of PPP projects, including but not limited to discussions on relevant policies and plans, financing sources, construction technology, contractual documentation, capacity building for the GoB. Under clause 2.2, the sectors covered by the MoU included, *inter alia*, Ports and Free Zones. Clause 6(2) provided that the duration of the MoU was for 5 years, but it could be extended by the decision of both participants in writing. Thereafter, the MoU was extended by the mutual decision of the participants on 04.04.2024 which was given retrospective effect from 16.02.2024 for 5 years.

Mr. Ahsanul Karim, at the outset, submits that the MoUs cannot be considered as valid MoU for the reason that the DPW signed the 1st MoU for the GoD and the Chief Executive Officer,

Port, Custom and Free Zone Corporation of Dubai signed the 2nd MoU for the GoD but they were not parties to the MoUs. Mr. Karim argues that the defect is a non-curable one and it goes to the root of the matter rendering the MoUs a nullity. In support of the argument, Mr. Karim refers to the unreported case of ***Mr. Salim Akhter Khan MBA and anr. vs. Advanced Development Technologies Ltd. and ors.***, Company Matter No. 95 of 2000 decided by the Company Bench of this Division on 23.04.2002. It was observed in the unreported case:

> "The said agreement was executed between the petitioners and the respondent nos. 2 and 3 but the respondent-company was not shown as a party in the said agreement. This agreement, however, was followed by another handwritten agreement on 26th June, 1999 (Annexure-C) with the heading 'Details of Commitments and Agreements.' The respondent-company was not shown as a party even in the said instrument.... This agreement itself does not bear the name of the respondent-company as one of the contracting parties, although the names of the petitioners and respondent nos.2 and 3 appear in the cause-title as parties to the agreement. They also executed the instrument in all the pages on behalf of their own self but nowhere the endorsement of the company itself appears in the agreement. Even on a plane [plain] reading of the agreement itself it does not show that the company is a party in the agreement although the assets of the company were being divided and distributed amongst the petitioners and the respondent nos. 1 and 2, however, in the bottom of Annexure-A of the contract the endorsement 'For Advanced development Technologies Ltd.' appears with the signatures of the Chairman S.M.

> Anwar Hossain and the Managing Director Salim A Khan. If we go through the two addendums to the agreement.... it would appear that those two addendums were also executed by two sets of share-holders on their own behalf but the name of the respondent-company did not appear anywhere in those agreements either as a party or as an executant of the agreement.... In the instant case, the petitioners and the respondent nos. 2 and 3, among themselves are the owners of all the shares of the respondent-company, still they do neither own the company not its properties. The company being a legal person, itself owns all its properties. As such, the agreement dated 6th July, 1999, amongst the share-holders of the company, to transfer and distribute its assets and properties was, firstly, neither binding on the company nor put any obligation on the company to pay any debt which was non-existent, so far the respondent-companies concerned, secondly, since the share-holders are not the owners of the properties of the company, any such agreement amongst themselves in respect of the properties of the company was also illegal."

Mr. Aneek R. Haque, learned Additional Attorney General submits that the facts, circumstances of the unreported case are totally different from those of the case in hand.

The first 2 pages of the MoU including the preamble have been reproduced in the judgment of Fatema Najib, J. at pp. 17-18. The preamble to the MoUs clearly states that the MoUs were entered into between the GoD and the PPPA of Bangladesh. The MoU further states, "NOW THEREFORE, the Participants hereto decided to the sign this MoU to....". 'Participants' were identified as the GoD represented by the DPW and the PPPA. In clauses 3.1, 3.4 of the

MoU, the words "GoD through DPW" have been used. Therefore, in my view, the GoD through the DPW (pro-forma respondent No. 4) is, no doubt, a party to the MoUs. Article 3.2 of the G2G Policy, 2017 clearly states that PPP projects undertaken through a G2G partnership can be implemented and executed with the support of other government and executed through their state owned or private sector entities. DPW is a state-owned entity of Dubai. Mr. Karim's argument on the legality of the MoUs falls to the ground.

Mr. Ahsanul Karim next argues that the project in question *i.e.* 'New Mooring Container Terminal (NCT), Chattogram' (in short, the 'NCT'), which is admittedly an existing project, is not a project within the meaning of 'project' defined in the PPP Act, 2015 and as such, the PPP Act does not apply to the NCT project. Mr. Aneek R. Haque's argument, on the other hand, is that it comes within the definition of the PPP Act. Their respective arguments have been recorded in the separate judgments delivered by my learned Sisters.

The term 'project' has been defined in Section 2(12) of the PPP Act, 2015 as follows:

"2(12) "**project**" means any such action or programme or a combination of both by means of which the following plans or activities are undertaken, such as:-

(a) construction or operation of any new infrastructure or a plan to do both;
(b) plan to reconstruct any existing infrastructure;
(c) plan to carry out the activities specified in sub-sections (a) and (b); or
(d) delivery of all those goods or services which are not related to any infrastructure facility".

Section 2(1) states that "**infrastructure**" means any new or existing physical or non-physical infrastructure in the public sector through which public goods or public services or both are created or provided. Section 2(19) states that "**reconstruction**" includes rebuilding, rehabilitation, modernization, renovation, expansion, enhancement, alteration or operation of any existing infrastructure.

Identical definition of 'project' has been given in Art. 4.1(xvi) of the G2G Policy, 2017. According to the said definition, the term "reconstruct" includes recreation, reformation or management in addition to those included in Section 2(19) of the PPP Act, 2015.

Admittedly, the Chittagong Port Authority (CPA) is a major stakeholder in the project as being the probable contracting authority as per Section 18 of the PPP Act, 2015. They have various statutory responsibilities and powers under the Chattogram Port Authority Act, 2022. For example, "এই আইনের উদ্দেশ্য পূরণকল্পে, যে কোনো ধরনের চুক্তি, বন্ড বা অনুরূপ আইনগত দলিলাদি সম্পাদন" [Section 10(2)(থ)], "বন্দর সংশ্লিষ্ট কোনো কাজের জন্য যে কোনো স্থানীয়, বিদেশি বা সরকারি সংস্থার নিকট হইতে পরামর্শ ও সহযোগিতা

গ্রহণ" [Section 10(2)(প)], and "বন্দর উন্নয়ন ও পরিচালনার জন্য কোনো প্রতিষ্ঠিত দেশি বা বিদেশি অভিজ্ঞতাসম্পন্ন বন্দর কর্তৃপক্ষ বা সংস্থার সহিত সহযোগী বন্দরের (সিস্টার পোর্ট) সম্পর্ক স্থাপন, সমঝোতা স্মারক বা অনুরূপ আইনগত দলিলাদি স্বাক্ষর" [Section 10(2)(ফ)]. The Act, 2022 can be looked into for the purport of the term 'operation' (পরিচালনা). Under the Act, 2022, "Port" means Chittagong Port [Section 2(16)]. "Terminal" means "সমুদ্র ও নদী সংশ্লিষ্ট পশ্চাৎ সুবিধাদি সংবলিত এইরূপ কোনো স্থাপনা যাহাতে জাহাজ নোঙর করা যায়, যেখানে জাহাজ হইতে পণ্য খালাস এবং জাহাজে পণ্য বোঝাই, কন্টেইনারে পণ্য স্টাফিং এবং কন্টেইনার হইতে আনস্টাফিংপূর্বক শেডে সংরক্ষণ করা যায় ও পরবর্তীকালে অন্য কোনো যানবাহনে পরিবহনের নিমিত্ত বা আমদানিকারক ও রপ্তানিকারকের চাহিদা অনুযায়ী গন্তব্যস্থলে প্রেরণের ব্যবস্থা গ্রহণ করা যায়" [Section 2(7)]. One of the functions of the CPA under Section 10(2)(ক) is "বন্দর সীমানার মধ্যে ডক, মুরিং, পিয়ার, বার্থ, জেটি, ইয়ার্ড, টার্মিনাল, সিএফএস, শেড, ওভার পাস, আন্ডার পাস, টানেল, স্লুইস গেইট, সেতু, রাস্তা, ভবন, রেলপথ, নালা, ছাদ, কালভার্ট, বেড়া, প্রবেশপথ, নির্মাণ, স্থাপন, মেরামত, রক্ষণাবেক্ষণ এবং পরিচালনা". While laying down the functions and powers of the CPA in various clauses of Section 10(2) of the Act, 2022, the term 'operation' (পরিচালনা) has been used in the section.

Having gone through the various definitions of the term 'project' given in the PPP Act, 2015 and the G2G Policy, 2017 read with the Act, 2022, I am of the view that the operation of an existing project falls within the definition of project for the purpose of the

Act, 2015. This view is fortified with the purport of the Act, 2022 entrusting the responsibility of managing and operating the Chittagong Port by the CPA. The legislature has purposely kept the definition of 'project' wide and vast to achieve the goal envisaged in the PPP Act, 2015 as enshrined in the preamble to the Act. The following discussions will make the point more clear.

Mr. Karim's next contention is that the ongoing process is based on the unsolicited proposal of the DPW. On the other hand, Mr. Haque's contention is that the ongoing process is based on the G2G initiative as per the direct selection method under the G2G Policy, 2017, not on unsolicited proposal. The provision relating to the unsolicited proposal is contained in Section 20 of the PPP Act, 2015 which runs as follows:

> "20. **Unsolicited proposal-**(1) Any private organization may, in accordance with the guidelines approved by the Board of Governors submit to the contracting authority or, as the case may be, the PPP Authority, any type of PPP project proposal comprising the proposal for the construction of any infrastructure or the reconstruction of any existing infrastructure of the public sector and its operation.
>
> (2) An unsolicited proposal shall be evaluated in accordance with the method prescribed by the guidelines approved by the Board of Governors.
>
> **Explanation:** For the purpose of this section, "unsolicited proposal" means any written proposal submitted by any

> private individual or organization on its own initiative, which has not been submitted pursuant to any formal government request."

Mr. Karim's main argument is that the DPW made the project proposal for the NCT after being invited/requested by the Government whereas the Explanation to Section 20 makes it clear that the unsolicited proposal has to be made by the proposer's own initiative, not pursuant to any formal government request. Mr. Karim further argues that although the ongoing process is based on unsolicited proposal, the concerned authority has not followed the procedures laid down in the "Guidelines for Unsolicited Proposals, 2018" and thus, the ongoing process has been taken without lawful authority. Relevant facts require examination to assess Mr. Karim's argument.

After entering into the 1st MoU, the DPW wrote a letter dated 23.08.2022 to the Secretary, Ministry of Shipping stating, "*.... we have requested that a terminal in the existing port of Chittagong is also placed on the platform. This could be either Patenga, NCT or CCT.... We.... request the Ministry of Shipping to initiate the process of placing either NCT or CCT on the Bangladesh Dubai Joint Platform and advise the PPPA to appoint a transaction adviser to facilitate an expeditious implementation"*.

The term "joint platform" can be traced back in clauses 3.1, 3.3 and 4.2 of the MoU. Those clauses and clause 3.4 are reproduced below:

"3.1 The United Arab Emirates-Bangladesh Joint PPP Platform (hereinafter referred to as "Joint Platform") between the Participants will be established to develop and implement the areas of cooperation outlined in Section 2 of this MoU and will be hosted by the PPPA and the GoD through DPW. Where appropriate, representatives of relevant Ministries and Agencies, and private sectors will be invited by the Participants. The structure, members and communication protocol of the Joint Platform will be determined through separate consultation and mutual understanding between the Participants.

3.3 The Joint Platform will examine potential PPP projects and provide advisory support to the Participants in all related activities as mentioned in Section 2 and described in Section 4.

3.4 Once a project is identified, PPPA and the GoD through DPW will start a formal arrangement for taking up the project under G2G program.

4.2 PPPA and/or the GoD will provide potential PPP projects to be examined in the Joint Platform as outlined in Section 3 and the Joint Platform will select, if any, one or more projects in which private sector entities from Dubai (hereinafter referred as "Dubai investors") may show interest."

On 24.08.2022, the DPW wrote to the PPPA stating, "*We met with the Honourable Minister and Secretary of Shipping, and they have requested a letter for the allocation of Patenga NCT or CCT at*

the Chittagong Port in addition to the Bay Terminal....We request that the PPP Authority place these projects on the G2G platform at the earliest. Both ministries are keen that the agreements be concluded for the respective projects by December 2022 and work on the project commenced." In my view, both letters by the DPW were written within the ambit of the MoU.

Thereafter, on 12.06.2023, the 3rd Joint PPP Platform meeting was held in Dhaka. Earlier, 1st and 2nd Joint PPP Platform meetings were held in September, 2019 and December, 2019 respectively. It is categorically stated in the minutes of the said 3rd Joint PPP Platform meeting that the DPW is a state-owned entity of the Government of Dubai. The relevant portions of Paragraph 9, 11, 13 and the decision contained in the minutes are reproduced below:

"9. ...According to the selection procedures that are mentioned in the Section 7.4 of the "Policy for Implementing PPP Projects through Government to Government (G2G) Partnership, 2017" and Section 4 of the signed G2G MoU between Bangladesh and UAE Chairman of the Chittagong Port Authority (CPA) made a presentation on two potential PPP projects under their jurisdiction, namely Bay Container Terminal 2 and New Mooring Container Terminal [NCT].

11. ....the UAE officials and DP World executives have shown keen interest in the projects of CPA.... MD and CEO of DP World Subcontinent and Sub-Saharan Africa confirmed their acceptance to the proposed projects, New Mooring Container Terminal (NCT) and Bay Container Terminal 2.

And confirmed readiness to proceed with the next steps for NCT and Bay Terminal.

13. ...DP World representative requested the PPP Authority, Ministry of Shipping, and the Chittagong Port Authority to expedite the appointment and mobilization of the Transaction adviser for NCT and Bay Container Terminal. DP World also requested Chittagong Port Authority to allow them to simultaneously do the due diligence for NCT while the Transaction Adviser is appointed and works swiftly on feasibility toward finalizing the RFP [Request for Proposal].

DECISION

1. DP World will provide their official acceptance to the proposed projects along with nomination of the proposed private developers/ partners to PPP Authority."

Thereafter, the DPW, vide letter dated 13.07.2023 formally confirmed their official acceptance for the development of the projects namely, NCT and Bay Container Terminal-2 to be executed by the DPW under the PPP (G2G) in Bangladesh. The In-Principle approval of the project was accorded by the concerned authority as per Section 12(a) of the PPP Act, 2015 on 23.03.2023. On 11.03.2024, a project delivery team was constituted as per Article 12.1 of the "Procurement Guidelines for PPP Projects, 2018" (in short, "Procurement Guidelines, 2018").

2nd MoU was signed on 04.04.2024. The MoU was given retrospective effect from 16.02.2024. On 27.02.2025, the PPP Authority wrote a letter to the DPW informing their approval for

conducting due diligence for the operation and maintenance of the NCT project and requested the DPW to make necessary arrangement and visit the site area for conducting due diligence. In this regard, I note that Section 28 of the PPP Act, 2015 provides provisions for, *inter alia*, right to entry to the project area by the private partner/project company etc. Thereafter, a 7-member Evaluation Committee was proposed to be formed on 16.11.2025 as per Articles 38, 40.2 and 40.3 of the Procurement Guidelines, 2018 (Annexure-FF). In Annexure-FF, which was written in Bangla, the words, "...শীর্ষক প্রকল্পের দরপত্র মূল্যায়ন কমিটি গঠন" have been used. The memo also referred to Articles 40.2 and 40.3 of the Procurement Guidelines, 2018. Article 38.1 states, "For evaluation of the Applications, Proposals or Bids (as applicable), an Evaluation Committee shall be formed immediately after the issue of the RFQ or IFB (as applicable) and in any case no later than the Due Date." 'RFQ' means 'Request for Qualification' [Art. 4.1(lxiii)], 'IFB' means 'Invitation for Bid' [Art. 4.1(xxxii)] and 'Due Date' means dated specified in the RFQ, RFP or IFB (as applicable) [Art. 4.1(xxii)]. 'RFP means 'Request for 'Proposal' [Art. 4.1(lxi)].

The above-stated facts, in particular formal acceptance letter dated 13.07.2023 issued by the DPW (Annexure-F) followed by the

3rd Joint PPP Platform meeting held on 12.06.2023 (Annexure-E) support Mr. Ahsanul Karim's contention that the ongoing process is not based on unsolicited proposal as contemplated in Explanation to Section 20 of the PPP Act, 2015.

An interesting aspect of the PPP Act, 2015 is that apart from the provision contained in Section 20 relating to unsolicited proposal, the Act is silent as to the process for selection of private partners. Section 9(1)(i) has empowered the PPP Authority to determine the process for selection of private partners. Section 9(1)(a) has further empowered the PPP Authority to formulate policies, regulations, directions, guidelines and procedures in the matter which are to be published in the official Gazettes. The G2G Policy, 2017, the Procurement Guidelines, 2018 and the Guidelines for Unsolicited Proposals, 2018 were made and published in the official Gazettes accordingly.

Article 3.4 of the Procurement Guidelines, 2018 states that the unsolicited proposal shall be guided by the Guidelines for Unsolicited Proposals, 2018. In this case, Articles 2.1, 3.1 and 3.6 of the Procurement Guidelines, 2018 are relevant. Those are reproduced below:

2.1 The selection of a Private Partner for the delivery of PPP Projects is based on 4 (four) phases. These include:

- Identification Phase
- Development Phase
- Bidding Phase
- Approval and Award Phase

3.1 Unless stated otherwise, and subject to any specific PPP procurement guidelines issued by the PPP Authority, these Guidelines shall apply where the Contracting Authority is selecting a Private Partner for the delivery of its PPP Project under the framework of the PPP Act.

3.6 Notwithstanding anything contained in any other provision of these Guidelines, for PPP Projects to be delivered through government to government ("G2G") partnerships under the "Policy for Implementing PPP Projects through Government to Government (G2G) Partnership, 2017", the Memorandum of Understanding ("MoU") and/or any other agreement entered into by the Government with any other sovereign government shall be applicable.

Article 6.1 of the G2G Policy, 2017 states, "Under this Policy, the GoB will execute G2G Framework Agreements/ Memorandum of Understandings with other Governments on a bilateral basis in order to provide the procedural framework for engagement and modality for delivery of the PPP Projects to be undertaken through G2G partnership with the respective other Government".

Article 6.2 of the Policy, 2017 states, "The PPP Authority shall initiate and drive the process for developing and executing

G2G Framework Agreement/Memorandum of Understanding with other Governments. The PPP Authority may share with other Governments details about the G2G Policy and the PPP program in Bangladesh and seek expressions of interest of their intent to enter into a G2G Framework Agreement/Memorandum of Understanding."

Article 6.3 states, "Subject to concurrence from the Board of Governors, the PPP Authority may, through the Economic Relations Division, submit an official request to other Governments to enter into a G2G Framework Agreement/ Memorandum of Understanding".

Article 6.4 states, "The G2G Framework Agreement/ Memorandum of Understanding may include, but not limited to, the following:

a....

b....

c....

d. Selection process of the Investors, including the option for direct selection, limited tendering, open tendering and/or any other suitable selection process;

e. Governance arrangement and approval process for delivering projects;

f. Timing and responsibility for conducting feasibility study;

g....

h. The modality that may be used to deliver PPP Projects. The G2G Framework Agreement/Memorandum of Understanding may specify one or more modality that has been used nationally or internationally to deliver PPP projects;

i. Formation of project delivery team; and

j. Dispute resolution process".

Article 6.5 states, "The parties to G2G Framework Agreement/Memorandum of Understanding may add additional clauses and requirements in the G2G Framework Agreement/ Memorandum of Understanding."

Article 7.4 deals with matter relating to process of selection. It states, "The process for selecting the investor and developing, negotiating and agreeing the terms and conditions of the PPP Contract and project documents for implementation and delivery of the PPP Project shall be as set out in the G2G Framework Agreement/Memorandum of Understanding".

Article 7.7 states, "On issuance of the Letter of Award and the signature of the PPP Contract, the terms and conditions provided under the PPP Contract shall govern the development and implementation of the PPP Project".

Article 8.1 states, “The Policy shall be applicable in the following cases:

a. The proposed PPP Project to be undertaken through G2G partnership must fall within the definition of Project under the PPP Act; and

b. Any of the following conditions must be met:

i. The total cost of the Project must be more than or equal to BDT 1200 crore; or

ii. In case of projects costing less than BDT 1200 crore, the project must be used for launching a subsequent PPP Project or a programme of PPP projects costing more than or equal to BDT 2,000 crore”.

Earlier, the total cost of the project was BDT 2000 crore. Vide amendment made on 05.12.2018 through S.R.O., the cost is now BDT 1200 crore. The S.R.O. is given retrospective effect from 24.06.2018.

The ‘Project Profile’ of the NCT published on the website of the PPP Authority, which is a public document, shows that as on 20.02.2024 the estimated cost of the project was BDT 200 crore. In the revised project profile, last updated on 11.01.2026, the estimated cost of the project is USD 205 million (according to the Feasibility Study Report).

Clause 4.4 of the MoU states, “The Joint Platform will confirm the project(s) it selected and Dubai investor(s) recommended

by the GoD under Sections 4.2 and 4.3 respectively, in a written form". Clause 4.5 of the MoU provides provisions for selection process. **Clause 4.5** states, "The GoB may directly select it (them) as the investor(s) which will take part in the PPP projects without tendering process or whatsoever as per the G2G Partnership Policy, 2017, taking into account information about the Dubai investor(s) provided by the GoD".

A combined reading of the above-quoted various provisions of the PPP Act, 2015, the G2G Policy, 2017 and the Procurement Guidelines, 2018 suggests that the selection process is wide open and the same is to be decided and determined under the G2G Policy, 2017 (see Article 6.4(d) re: Selection Process) and the MoU entered into under the G2G Policy. The G2G Policy (Art. 7.4 *supra*) makes it further clear that the MoU shall govern the selection process. **Clause 4.5** of the MoU has opted for direct selection process without the tendering process. At the outset, I have decided that the MoUs are valid legal documents. Various provisions of the relevant statutes and delegated legislations as well as facts discussed above lay further support to my earlier observation on the MoU. The MoU cannot be termed as ultra *vires* the PPP Act, 2015 which is the primary source of law in the matter. In this case, the *vires* of law has not been challenged. Private partner includes 'state-owned entity'. Mr.

Ahsanul Karim has failed to show any violation of law in the ongoing process to render the same a nullity as being taken without lawful authority and of legal effect to justify issuance of writ of *certiorari*. Therefore, the 1st part of the Rule (issuance of writ of *certiorari*) fails. Letter of award has not yet been issued. 2nd part of the Rule for direction to ensure public bidding also fails for the reason that the bidding process is optional, not mandatory. In this case, the concerned authorities have opted for direct selection process in accordance with the law. The judicial review Court cannot sit over the authorities who are empowered by the primary and delegated legislations to take a final decision in the matter. This Court is concerned with the broad principles of illegality, irrationality in *Wednesbury* sense, procedural impropriety and proportionality - the classic grounds for judicial review as stated by Lord Diplock in ***Council of Civil Service Unions vs. Minister of State for Civil Service (the GCHQ case)***, [1985] AC 374 which have been codified in Article 102 of our Constitution and are followed and applied in our jurisdiction.

Mr. Ahsanul Karim refers to Sections 7 and 14 of the PPP Act, 2015. Section 7 provides that the Board of Governors of the PPP Authority shall consist of the Prime Minister who will be the Chairperson, Minister, Ministry of Finance (Vice-Chairperson), a

Minister nominated by the Prime Minister, Minister or State Minister of the Ministry of concerned with the Project and Principal Secretary to the Prime Minister and Chairman, PPP Authority. Section 14 states that the in-principle and final approval for a PPP project shall be granted by the Cabinet Committee. Mr. Karim argues that under the present Interim Government, there is a Chief Adviser and a body of Advisers instead of Prime Minister and Ministers/State Ministers and as such, there is no Cabinet Committee. Therefore, the preset Interim Government is not authorised by the PPP Act, 2015 to take any decision which requires decision of the Board of Governors and Cabinet Committee. "Cabinet Committee" means the Cabinet Committee on Economic Affairs formed pursuant to rule 18 of the Rules of Business, 1996.

The present Interim Government headed by the Chief Adviser took oath under the Constitution on 08.08.2024 pursuant to the reference and opinion given by the Apex Court under Article 106 of the Constitution. The matter was challenged in Writ Petition No. 14041 of 2024. This Division, vide judgment and order dated 13.01.2025 rejected the writ petition in *limine*. Under Article 48(3) of the Constitution, the President of Bangladesh, in exercise of all his functions, save only that of appointing the Prime Minister and the Chief Justice, acts in accordance with the advice of the Prime

Minister. Article 55(2) of the Constitution states that the executive power of the Republic shall, in accordance with the Constitution, be exercised by or on the authority of the Prime Minister. Article 55(4) states that all executive actions of the Government shall be expressed to be taken in the name of the President. Under rule 8 of the Rules of Business, 1996, cases specified in Schedule V to the Rules are submitted to the Prime Minister which include various matters relating to Public Administration, Defence, Foreign Affairs etc. Allocation of business in matters relating to Board of Investment, Bangladesh Export Processing Zones Authority, Privatization Commission etc. listed in Clause 2 under the heading "Prime Minister's Office" in the 'Allocation of Business among the different Ministries and Divisions' made pursuant to Schedule I of the 'Rules of Business' are dealt with the office of the Prime Minister. If I accept Mr. Karim's argument, then the relevant Constitutional provisions and the Rules of Business, 1996 will all have to be kept in abeyance during the tenure of the present Interim Government. Practically the Interim Government will not be able to function in accordance with law. This will lead to a total impasse resulting in a chaotic situation. Mr. Karim's argument is not only fallacious but also absurd. In a desperate attempt, Mr. Karim argues that the Apex Court allowed Civil Review Petition Nos. 282 of 2024, 313 of 2024

and 248 of 2025 on 20.11.2025 and thereby revived the Caretaker Government system prospectively and therefore, the present Interim Government cannot take a policy decision in the instant subject matter. I note that the ongoing process under the PPP Act, 2015, the G2G Policy, 2017, Procurement Guidelines, 2018 and the MoU has been challenged as being violative of law, not as a policy matter. Policy matters are not amenable to judicial review unless there is a violation of law. Mr. Karim's argument is fallacious.

Mr. Karim argues on security and loss of revenue issues. Same argument was placed before the Division Bench and is recorded in the judgments. Suffice it to say that the purpose of the PPP Act, 2015 is to attract local and foreign investment in the designated projects on public-private partnership involving foreign private and/or state-owned entities as development partner(s). The primary legislation and subordinate legislations have been made to give effect to the purpose of the law including a right to entry to the project area etc. under Section 28 of the PPP Act, 2015. Similar provisions are contained in the Chittagong Port Authority Act, 2022. An interesting aspect of this case is that the petitioner has no objection to other projects proposed to be undertaken by the DPW. Their only objection is against the NCT project at Chittagong Port which raises eye brows. Loss of revenue issue, as argued, does not fall within the ambit of

judicial review. Mr. Syed Mamum Mahbub, learned Senior Advocate appearing with Mr. Karim, adopts the argument of Mr. Karim and does not add further new argument.

During the course of hearing of the Rule, Everest Port Services Limited filed an application dated 07.01.2026 for addition of party as respondent No. 5 describing itself as service provider of Container Handling Services at General Cargo Berth (GCB) Terminal, Chittagong Port since 2007 having legal and financial interests in the writ petition in that the outcome of the same shall have a direct bearing on the applicant's business operation and future prospect. Learned Advocate Mr. Nasir Uddin Ahmed Ashim appeared for the applicant.

One Md. Ziaul Haque also filed an application dated 08.01.2026 to be added as intervener co-petitioner describing himself as representative of Dhaka University based civic and student organisation which is actively engaged in advocating for the protection of national interest, economic sovereignty and constitutional governance having a direct and substantial interest in the subject matter of the writ petition. It is stated in the application that the presence of the applicant as intervener co-petitioner will not cause prejudice to the existing parties, rather it will facilitate a more

comprehensive examination of the legal, constitutional, and public interest dimensions of the case. Learned Advocate Mr. Mohammad Ahasan appeared for the applicant.

One Toslim Hossain Selim filed an application dated 12.01.2026 for addition of party as respondent No. 6 describing himself as a general labour employed by Fleet International Ltd., which is a licensed ship-handling operator at Chittagong Port. It is stated in the application that the outcome of the writ petition shall directly affect the legal rights, livelihood, service interest, and continued engagement of the applicant as well as more than 7,000 labours working in the handling, loading and unloading cargo at Chittagong Port. Learned Advocate Mr. Saqeb Mahbub appeared for the applicant. I note that the name of the Senior Advocate Mr. A.M. Mahbub Uddin appears in the wokalatnama. Mr. A.M. Mahbub Uddin did not appear for the applicant but he appeared for the petitioner before the Division Bench and also appeared before this Third Bench on 21.01.2026 and prayed for adjournment of the hearing.

By order dated 13.01.2026, this Court kept the applications with records and gave liberty to the learned Advocates to make submissions during the course of hearing. Accordingly, on

27.01.2026, this Court heard Mr. Nasir Uddin Ahmed Ashim, and on 28.08.2026, heard Mr. Saqeb Mahbub and Mr. Mr. Mohammad Ahasan respectively.

Mr. Mohammad Ahasan appearing for the applicant Md. Ziaul Haque (proposed to be added as intervener co-petitioner) refers to Order I, rule 1 of the Code of Civil Procedure, 1908 (CPC) which runs as follows:

> "**R.1. Who may be joined as plaintiffs-** All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise".

Order I, rule 10(2) is relevant for determination of the fate of the applications. Rule 10(2) is reproduced below:

> "**10(2). Court may strike out or add parties-**The Court may at any stage of the proceedings, either upon or without any application of either party, and on such terms as may appear to the Court tobe just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added".

It appears from the applications for addition of party and the submissions of the learned Advocates that the applicants intend to support the Rule which is obtained in a public interest litigation. No right to relief exists under Order I rule 1 in favour of the applicant to be added as intervener co-petitioner according to the terms of the instant Rule. The applicants have utterly failed to satisfy that their presence is required to enable the Court, in terms of Rule 10(2) of the CPC, for effectual and complete adjudication and settle all the questions involved in the writ petition. They are not even proper parties, let alone necessary parties. A person should not be added because he would be incidentally affected by the judgment (***Banarasi vs. Pannalal***, AIR 1969 Punj 57) or for seeing that the suit is properly defended (***Fateh vs. Suraj,*** AIR 1969 Raj 252). The applicants did not file any application before the Division Bench for addition of party. The only conclusion that I can draw is that the applications have been filed to interrupt the ongoing hearing of the Rule by this Third Bench and to delay the proceedings. As such, these are not *bona fide* applications. The application dated 13.01.2026 filed on behalf of the petitioner praying for an order of *status quo* appears to be a dilly-dally device to drag the proceedings. Accordingly, all the applications are rejected.

In the result, the Rule is discharged.

Mr. Md. Anwar Hossen, learned Advocate of the petitioner, prays for issuance of certificate in terms of Article 103(2)(a) of the Constitution (certificate that the case involves a substantial question of law as to the interpretation of the Constitution). I have already observed that *vires* of law has not been challenged in this writ petition. This case only involves interpretation of statutes and delegated legislations in the attending facts and circumstances of the case. Accordingly, the prayer is rejected.