

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

**Writ Petition No. 20240 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:**

Aleya Enterprise Limited and others  
...Petitioners

-Versus-

**Present:**

Mr. Justice Sashanka Shekhar Sarkar  
And  
Justice Urmeem Rahman

The Government of the People's Republic  
of Bangladesh, represented by the  
Secretary, Energy and Mineral Resources  
Division, Ministry of Power, Energy and  
Mineral Resources and others

... Respondents

Mr. Mohammad Hussain, Senior Advocate with  
Mr. Abdul Halim Shikder, Advocate  
...For the petitioners

Mr. Md. Bodrudozza, Senior Advocate with  
Mr. Hasibul Huq, Advocate

... For the respondent No. 2-3

**Heard on 12.03.2026, 26.04.2026 and 10.05.2026**  
**Judgment on 17.05.2026**

**Urmeem Rahman, J:**

In the instant matter a Rule Nisi 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 Tender  
Notice bearing reference No. BCPCL/Procurement/  
OTM/2025-26/1106.03 dated 06.11.2025 (Annexure-*

*E) issued by the respondent No. 3, inviting tenders for procurement of Clearing & Forwarding (C&F) Services for Bulk Materials and Spare Parts Shipments for Payra 1320 MW Thermal Power Plant under Open Tender Method (National) during the subsistence of the petitioners' valid enlistment as approved C&F agents for Bangladesh-China Power Company Limited should not be declared to have been taken and issued without lawful authority and are of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

At the time of issuance of the Rule it was further ordered that,

*“Pending hearing of the Rule, let the operation of Tender Notice bearing reference No. BCPCL/Procurement/OTM/2025-26/1106.03 dated 06.11.2025 (Annexure-E) be stayed for a period of 3(three) month from date.”*

After issuance of the Rule and the ad interim order of stay, the Respondent no. 2 challenged the same by filing Civil Petition for Leave to Appeal No. 398 of 2026 and Hon'ble Judge in Chamber by the order dated 09.02.2026 was pleased to pass no order and sent this matter before this Bench for hearing the Rule as expeditiously as possible.

Necessary facts for disposal of the instant Rule, as narrated in the writ petition, in short, are that, the petitioners have been providing C&F (Clearing and forwarding) Services to the respondent No. 2, they are engaged in this business as C&F agents with valid licenses and have been doing their business in Payra, Chattogram and Mongla Ports. On 02.02.2025, Bangladesh-China Power Company Limited (hereinafter referred to as 'BCPCL'), under the signature of Superintendent Engineer, Procurement Division, BCPCL, floated an 'Invitation for Enlistment' for enlistment of Clearing and Forwarding (C&F) agents. On 25.02.2025 the petitioners duly submitted their applications along with all requisite documents, declarations in prescribed forms. On 13.07.2025 the Procuring Entity (PE), Superintendent Engineer, Procurement Division (respondent No. 3), informed the petitioners that the Technical Evaluation Committee had accepted their applications and requested them to deposit a non-refundable fee of Tk. 1,00,000/- (Taka one lac) only in favour of BCPCL and to submit the deposit slip to the office by 21.07.2025. On 04.09.2025 the respondent No. 3 issued a notification of enlistment, designating the petitioners as approved C&F agent for Payra 1320 MW Thermal Power Plant. It was specifically stipulated in the Notification of Enlistment that the enlistment would remain valid for a period of two years from the date of issuance i.e. till 03.09.2027. The petitioners have already cleared consignments of 20 ships imported by respondent no. 2. On 06.11.2025 the

respondent No. 3 floated a Tender Notice bearing reference No. BCPCL/Procurement/OTM/2025-26/1106.03 dated 06.11.2025 inviting tenders for procurement of C&F Services for Bulk Materials and Spare Parts Shipments for Payra 1320 MW Thermal Power Plant under Open Tender Method (National) during the subsistence of the petitioners' valid enlistment as approved C&F agents for Bangladesh-China Power Company Limited.

Being aggrieved thereby and there having no other alternative and equally efficacious remedy available, the petitioners have filed the instant writ petition and obtained the instant Rule and an order of stay of the impugned tender notice.

Learned Senior Advocate Mr. Mohammad Hussain with Mr. Abdul Halim Shikder, learned Advocate appeared on behalf of the petitioners. At the very outset the learned Advocate for the petitioners submitted that, admittedly the petitioners have been duly enlisted by the BCPCL for carrying out the clearing and forwarding services in respect of imported goods for 'Payra 1320 MW Thermal Power Plant' and their enlistment is valid till 03.09.2027. Notwithstanding the subsistence of the petitioners' valid enlistment, the respondent No. 3 has issued tender notice dated 06.11.2025 under Open Tender Method. Hence, the issuance of the said notice is ex-facie illegal and is liable to be declared to have been issued without any lawful authority and is of no legal effect.

Learned Advocate forcefully submitted that, although the petitioners are the duly enlisted C&F Agents of BCPCL for the

purpose of performing clearing and forwarding of imported goods, yet the authority has issued the impugned tender notice for procurement of C&F services by completely bypassing the petitioners. Such issuance of tender notice manifestly shows mala fide and ulterior motive of the authority as they are seeking to assign the C&F works to outsiders, rendering the impugned tender notice dated 06.11.2025 as illegal and without lawful authority and is of no legal effect.

He next submitted is that, the petitioners participated in the enlistment process of BCPCL with the legitimate purpose of carrying out the C&F activities of the same. After duly enlisting the petitioners, the delegation of the identical procurement to outsiders tantamount to malice in law and malice in fact. Accordingly, issuance of tender notice dated 06.11.2025 is liable to be declared to have been issued without any lawful authority.

Learned Advocate finally submitted that, the petitioners participated in the C&F Agents enlistment of BCPCL with the expectation that they would be engaged to perform the relevant C&F services of BCPCL till expiry of their tenure. But seeking to procure such services from other tenderers, despite the petitioners' valid and ongoing enlistment, violates their legitimate expectations. Hence, such issuance of tender notice is arbitrary and unlawful and thus he prays that the Rule may be made absolute.

On the other hand, learned Senior Advocate Mr. Md. Bodruddoza along with Mr. Hasibul Huq, entered appearance on

behalf of respondent No.2 and 3 i.e. the Bangladesh-China Power Company Limited, represented by its Chairman and Superintendent Engineer, Procurement Division of BCPCL. They vehemently contested the Rule by filing an affidavit in opposition.

Learned Advocate for the respondent No. 2-3 admits that the petitioners have been enlisted as C&F Agents through due process and such enlistment is still valid. However, on all occasions BCPCL experienced syndicated pricing from the participating C&F Agents. They quoted exactly the same price on multiple occasions in violation of the declarations made by them and also the terms and conditions of the respective tender documents, thereby depriving BCPCL of competitive pricing, forcing it to pay far in excess of market rate and seeing its financial resources get wasted in this manner. Therefore, the respondent authority rightly issued the impugned tender notice.

Learned Advocate next submitted that at the time of enlistment the petitioners have made a declaration in which it has been categorically stated that, in any case of violation, the respondent reserves the right to reject all the applications or annul the enlistment proceeding without incurring any liability to the Applicant. Despite signing the declaration, the petitioners have violated the terms and conditions and therefore, the writ petition is not maintainable in its present form and thus the Rule is liable to be discharged.

Learned Advocate further submitted that, respondent No. 2 invited another tender amongst the 20 enlisted C&F Agents in respect of another batch of coal shipments through email dated 19.10.2025. In that tender all the 18 petitioners participated and quoted the exact same price. Noticeably, QNS Enterprise Limited, which quoted the lowest price in the previous tender, did not participate in the said second tender. The Respondent no. 2 company was alarmed by this anti-competitive syndicated pricing, which is 67.25% higher than official cost estimation and also much higher than the market rate given the far lower price it paid to QNS Enterprise in the tender from the previous month of September 2025. As a result, the company decided to cancel the tender and issue re-tender for the same coal shipment, as will be evident from its office note dated 04.11.2025. Pursuant to the same, the Respondent no. 2 company issued re-tender for C&F Agents services amongst the 20 enlisted C&F Agents for the same imported coal shipments, through email dated 04.11.2025. While issuing the re-tender, the Respondent no. 2 also reminded all the 20 enlisted C&F Agents against quoting same price/price syndication vide letter bearing reference no. BCPCL/ Procurement/Letter/ C&F\_Enlistment/1105.03 dated 05.11.2025. The letter requested all the enlisted C&F Agents to **"submit competitive offers in line with the tender terms & conditions"** because **"BCPCL expects fair competition and professional conduct from all tenderers"**. The company backed it up with a reminder to the C&F Agents that

should they quote similar price again, BCPCL reserves the right to cancel their enlistment and use Open Tendering Method for future C&F service procurements to ensure competition. In the re-tender, 16 out of the 20 enlisted C&F Agents took part and quoted price which are higher than the price quoted by them in the cancelled tender, while only M/s. Coma Creation (Petitioner no. 4) quoted the same price as the said cancelled tender, which is exorbitantly high given the said low price BCPCL paid to QNS Enterprise just the month before (September 2025). This means that the participants continued to quote anti-competitive syndicated prices, and the lowest price amongst them, quoted by the Petitioner no. 4, is 67.25% higher than official cost estimation of BCPCL. Nevertheless, the Respondent no. 2 was constrained to accept the high price offered by M/s. Coma Creation in order to ensure timely handling/unloading of the upcoming imported coal shipments after several days had been wasted in arranging the said cancelled tender. Due to this unfair conduct of the petitioners, the respondent no. 2 rightly floated the open tender. Hence the Rule having no merit is liable to be discharged.

It has been submitted by the learned Advocate that, while accepting the said quote of the Petitioner no. 4, the Technical Evaluation Committee of the BCPCL, however, also recommended to cancel the enlistment of all the 20 C&F Agents and invite open tender to procure C&F services for future imported shipments so as to allow BCPCL to receive competitive prices in the future after it

became impossible from the current enlisted C&F Agents. Accordingly, the Respondent no. 2, company, with the intention to procure C&F services at competitive prices after finding out that its enlisted C&F Agents will not stop quoting anti-competitive syndicated prices, published an Invitation for Tender in a daily newspaper on 06.11.2025 (Annexure-E) under Open Tendering Method for procuring C&F services without, however, cancelling enlistment of the 20 entities.

Learned Advocate for the respondent No. 2 contends that, BCPCL issued a tender notice on 29.12.2025 to the said 20 enlisted entities for procurement of C&F services, pursuant to which the Respondent no. 2 entered into a contract agreement on 08.01.2026 with M/s. James International, the Petitioner no. 14 though the petitioner no. 14 repeated the abovementioned trend by quoting the same slab prices stated above.

Learned Advocate empathically submits that, this collusive and anti-competitive price-quoting of the Petitioners have already cost the Respondent no. 2 significant amounts of money in procuring C&F services from the aforesaid petitioners, as BCPCL had to pay far more money than both official cost estimation of the company and the price paid by BCPCL in the months prior to the enlistment of the 20 C&F Agents. Learned Advocate then referred to clause 10.3 of the operation clause of the contract entered into between the parties. Clause 10.3 is under the heading "Section 3: General Conditions of Contract", wherein it has been categorically

stated that the employer will exclude an enlisted C&F Agents who has engaged in collusive practice of any kind from further participation in the particular procurement proceeding (clause 10.3(a)) or declare it ineligible to participate in further procurement proceedings (clause 10.3(b)).

Since their enlistment as C&F Agents on 04.09.2025 the petitioners have engaged in anti-competitive practice in each and every tender by quoting the same price, which forced BCPCL to accept their high price on all but one occasion given BCPCL's urgency to quickly unload coal shipments and therefore the action taken by the respondent No. 2 by publishing an open tender has been done lawfully and without any violation.

It has also been argued by the learned Advocate that, BCPCL is a private limited company and a Joint Venture between North-West Power Generation Co. Ltd. and China National Machinery Import & Export Corporation; moreover, the issue of enlistment of C&F Agents is a purely commercial matter, hence for these two reasons neither BCPCL nor issue of enlistment of C&F Agents come within the purview of writ jurisdiction.

Learned Advocate finally submitted that, the impugned tender notice dated 06.11.2025 has already been acted upon inasmuch as the Rule was issued on 30.11.2025 and before the formal notice was served upon the respondents the other agents have participated in the tender and therefore the Rule has become infructuous.

By filing an affidavit in reply to the affidavit in opposition made by the respondent No. 2 learned Advocate for the petitioners submitted that, the allegation of price syndication made by the respondent No. 2 is untrue inasmuch as the petitioners did not quote syndicated price, rather they all quoted the tender price which is the fixed lowest possible price as per the resolution taken by the 'Chattogram Customs Agents Association'. Referring to Annexures-H, H(1) and I series learned Advocate submitted that, C&F Agents of other departments have given the same quotation following the rate fixed by the Association. Hence, the allegation of price syndication is baseless.

Learned Advocate for the petitioners also submitted that, the recommendation by the Managing Director dated 12.11.2025 to cancel the enlistment of the petitioners is unfounded and baseless and the same was never communicated to the petitioners and they were not given any opportunity of being heard before taking such decision.

In reply, the learned Advocate for the respondent No. 2 submitted that, this decision dated 12.11.2025 has not been finalized yet; this is a mere recommendation and no official action has been taken on the basis thereof by cancelling the enlistment of the petitioners. Therefore there is no reason for them to be aggrieved by the same.

We have heard the learned Advocates for the respective parties and perused the material evidence on record.

First of all the issue of maintainability of this writ petition raised by the learned Advocate for the respondents requires to be adjudicated. He submitted that, BCPCL being a private limited company and the dispute having been arisen out of a contract, the writ petition is not maintainable.

Bangladesh-China Power Company Ltd. (BCPCL) is a joint venture between North-West Power Generation Export Corporation, which hold equal share of ownership in the company in a 50:50 ratio, as has been stated in the affidavit in opposition. North-West Power Generation Company Limited is an enterprise of Bangladesh Power Development Board and is a public limited company. Being an enterprise of a statutory body, it comes under the ambit of the definition of 'Local authority' as per the definition provided in General Clauses Act. Moreover, it is true that, ordinarily disputes relating to enforcement of contractual rights are not amenable to writ jurisdiction, however, it is equally well settled that where the action of a statutory authority is challenged on the ground of arbitrariness, mala fide, discrimination, unfairness and violation of natural justice, the constitutional jurisdiction of judicial review is not excluded merely because the dispute has arisen from a contractual relationship. In the present case the grievance of the petitioners is regarding the legality and fairness of the respondents' exercise of public power, not to enforcement of a pure private contract. Considering the above we find this writ petition to be maintainable in its present form.

It is admitted fact that, the petitioners were enlisted as C&F Agents on 04.09.2025 as transpires from Annexure-D to the writ petition, in which it has been categorically stated that:

*“This enlistment will remain valid for two (02) years from the date of issuance of this letter, as per the terms and conditions of the enlistment documents.”*

Both the parties before us admitted that, there was no such stipulated terms and conditions in the agreement at the time of enlistment of the petitioners as C&F Agents. However, respondent No. 2 in the supplementary affidavit in opposition has annexed a format of an application from which it appears that there is a declaration to be made on the part of the applicants in the following manner:

*“I/We understand that you reserve the right to reject all the Applications or annul the enlistment proceedings without incurring any liability to Applicant.”*

With this undertaking the petitioners have been enlisted as recognized C&F Agents of the respondents. It is the allegation of respondent No. 2 that a price syndication has been done on the part of the petitioners by quoting the exact similar price at extremely high rate by all the listed agents amounts to violation of the competitive method. We also find from the documents annexed

with the affidavit in opposition that all the writ petitioners have asked for the exact same amount of tender price.

However, from the affidavit in reply by the petitioner it is found that, this has been done in pursuant to the resolution of the Chattogram Customs Agents' Association, who has fixed the rate of quotation to be given by the C&F Agents (Annexure G-1). It is also apparent from the other documents that C&F Agents of other departments have given the same quotation following the rate fixed by the Chattogram Customs Agents' Association (Annexures-H, H(1) and I series).

Whether asking of the exact tender price by all the C&F Agents is in breach of the Competition Act or not, that is not the subject matter before us. We shall only be considering whether the open tender published by the respondent No. 3, which is impugned herein, was done in accordance with law or not.

Admittedly, the petitioners were enlisted on 04.09.2025 for a period of 2(two) years, which is due to expire on 03.09.2027. Raising an allegation of price syndication, the respondent No. 2 sent an e-mail to the petitioners on 04.11.2025 stating that:

*“Pursuant to the above-mentioned subject, please find the tender document for Procurement of Clearing & Forwarding (C&F) Services for 10 Nos. of coal shipments (GBU-10+ATC-59+BR-352 and 7 shipments onwards) (Re-tender).*”

*Please, find the attached documents and submit your tender on or before 12:00 PM by November 09, 2025.”*

It appears from the Annexure-VI(1) to the affidavit in opposition that on 04.11.2025 emails were issued to the enlisted C&F Agents asking to submit quotation by November 09, 2025. On the following day i.e. on 05.11.2025 another e-mail was sent to all the 20 enlisted C&F Agents including the petitioners stating that:

*“During the financial evaluation, it was observed that all participating firms quoted a same price. This raised concerns regarding fair competition and price syndication, to ensure transparency, fairness, and competitive pricing in the procurement process, BCPCL Management has decided to re-invite the tender.*

*Accordingly, the re-tender titled "Procurement of Clearing & Forwarding (C&F) Services for 10 Nos. of coal shipments (GBU-10+ ATC-59+ BR-352 and 7 Shipments onwards) (Re-tender)" has been issued to 20 enlisted firms (Reference: BCPCL/Procurement/1.TM/2025-26/1104.02, dated November 04, 2025).*

*All enlisted firms are hereby requested to participate in the re-tender and submit competitive offers in line with the tender terms and conditions. BCPCL expects*

*fair competition and professional conduct from all tenderers. Please note that if similar pricing behavior is observed again, BCPCL reserves the right to cancel the enlistment and adopt the Open Tendering Method (OTM) for future C&F service procurements to ensure competitive market participation.”*

It is the allegation of the respondent No. 2 that although two e-mails were sent to the petitioners with a warning not to do anything against competitive pricing in the procurement process, yet the petitioners again submitted tender by given the exact similar quote. Hence the respondent No. 2 authority, as appears form Annexure-VIII(18), took a decision vide resolution dated November 12, 2025 wherein it was decided that,“BCPCL may consider reviewing and cancelling the current enlistment of C&F agents, as the repeated identical and patterned pricing may indicate a lack of fair competition among the enlisted firms”. It was also decided that, “Following such cancellation, BCPCL may refund the enlistment fees (although previously declared non-refundable in the enlistment notice) and initiate a fresh open tendering process to engage new C&F Agents under a more competitive and transparent selection method”. This decision was forwarded to the Managing Director, who on the same day accepted the recommendation stating that:

*“Evaluation committee recommendation may be accepted with a 67.25% higher price as the*

*work is emergency and the enlistment may be cancelled and go for open tender.”*

It appears from the impugned tender notice that, though the decision to cancel the enlistment of the enlisted C&F Agents and then to go for open tender was taken on 12.11.2025, few days before that on 06.11.2025 the respondent company has floated an invitation for tender in the open tendering method.

It has also been admitted by the learned Advocate for the respondent No. 2 that the internal decision of the evolution committee approved by the Managing Director has not yet been implemented by issuing a show cause notice upon the petitioners as to why their enlistment should not be cancelled.

In this admitted situation publishing tender notice by the respondent no. 2 in open tendering method before the expiry of the period of enlistment or before cancelling the enlistment appears to be arbitrary and mala fide in nature.

Referring to the Public Procurement Rules, 2025 learned Advocate for the respondent No. 2 submitted that, as per this Rule each and every participant in a tender are bound not to engage in any price syndication. According to Rule 149(2)(c) of the PPR, 2025 price syndication has been defined as an act of conspiracy and there is a detail procedure for taking action against this. As per Rule 78(1) of the PPR, 2025 open tendering method (OTM) is preferable

and the respondent no. 2 has floated the open tender lawfully in the given situation discussed hereinabove.

It has been admitted by the learned Advocate for the Respondents that on earlier occasion the Technical Evaluation Committee of BCPCL recommended to cancel the enlistment due to the price syndication made by the enlisted agents. Moreover by the e-mails dated 04.11.2025 and 05.11.2025 the respondent authority asked the petitioners to submit offer with a warning not to do any further price syndication. Though these e-mails were regarding the re-tender, the warning is deemed to be applicable for any other future anti-competitive act. After giving warning, the very publication of the open tender on the following day i.e. on 06.11.2025, without cancelling their enlistment and without giving them an opportunity to rectify their position is found to be done in an unlawful manner.

The petitioners were duly enlisted through a competitive process upon payment of taka one lac fee and such enlistment is said to be valid for two years. So long as the enlistment remained in force and is not lawfully terminated or cancelled, the petitioners possess a legitimate expectation that the company would continue to procure the relevant services from amongst the enlisted agents. Although enlistment does not create an indefeasible right to obtain any particular work order, it does confer a right to fair and non-arbitrary treatment by the authority.

Respondents admit that the Evaluation committee earlier recommended annulment of the existing arrangement because of the alleged price syndication. However, the company never acted upon such recommendation and no order cancelling or rescinding the enlistment was issued. Consequently, the company treated the enlistment as continuing and operative. Having allowed the enlistment to subsist, the authority could not bypass the enlisted agents and simultaneously invite outsiders through an open tender.

The allegation of price syndication constituted the foundation of the impugned action. Yet no show cause notice was issued, no enquiry was conducted and no opportunity of hearing was afforded to the petitioners before depriving them of the benefit from their valid enlistment. While asking them to submit offer in the re-tender the petitioners were merely cautioned against alleged price syndication. A warning is corrective in nature and gives rise to a reasonable expectation that, upon improvement of performance, the existing arrangement would continue. If the respondent company considered the petitioners guilty of price syndication, it ought to have cancelled or suspended the enlistment. Conversely, if the enlistment was allowed to continue, the authority could not resort to an open tender. Such conduct is manifestly arbitrary and mala fide.

There is no doubt that the respondent No. 2 holds the absolute authority to cancel/annul the enlistment at any point of time on the basis of the allegation made by them against the enlisted C&F Agents. But in the present case the respondent without cancelling

the enlistment, initiated the process of open tendering method when they could have easily cancelled the enlistment in due process prior to doing so.

It has been submitted by the learned Advocate for the respondent No. 2 that the impugned tender notice has already been acted upon inasmuch as the tender has been made open to all and some already participated in the tender and therefore the Rule has become infructuous.

In reply, learned Advocate for the petitioner argued that, since the open tender notice was passed without issuing any notice upon them, they did not have any knowledge about it neither they have any knowledge as to the participation of the other tenders in the said open tender method, which has been done during the pendency of the order of status-quo passed by this Division at the time of issuance of the Rule.

In view of the facts and circumstances of the case stated hereinabove, we are of the view that, the impugned action founded upon allegations of price syndication but taken without affording the petitioners any opportunity of hearing and without cancelling their enlistment, is arbitrary, unfair and suffers from legal malice and therefore is set aside.

Accordingly we find merit in the Rule and the impugned tender notice bearing dated 06.11.2025 issued by the respondent No. 2 inviting open tender for procurement of cleaning and forwarding services during the subsistence of the petitioners' valid

enlistment is hereby declared to have been done without any lawful authority and to be of no legal effect, without prejudice to the respondents' right to proceed against the enlisted agents in accordance with law.

In the result, the Rule is made absolute.

The order of stay granted at the time of issuance of the Rule is hereby re-called and vacated.

However, there is no order as to costs.

Communicate the judgment and order at once.

**Justice Sashanka Shekhar Sarkar, J:**

I agree.