

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

WRIT PETITION NO. 2144 OF 2026

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Parvin Akter, Proprietor of Monnoo Corporation and others

.....Petitioners

-VERSUS-

The Government of Bangladesh, represented by the Secretary, Ministry of Agriculture and others

..... Respondents

Mr. Md. Golam Mahmud (Shaheen), Advocate with
Mr. Gazi M H Tamim, Advocate,
Mr. Abdullah Al Mahmud, Advocate and
Mst. Kuheli Sultana, Advocate

..... For the Petitioners

Mr. Mohammad Waliul Islam Oli, D.A.G with
Mr. Mohammad Rashadul Hassan, D.A.G,
Ms. Nilufar Yesmin, A.A.G,
Mr. Md. Moshir Rahman (Rahat), A.A.G,
Mr. Md. Motaasin Billah Parvez, A.A.G and
Mr. Bishwanath Karmaker, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmeem Rahman

Heard on 10.05.2026 and 12.05.2026

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 Memo No. 12.00.0000.032.04.018.25.300 dated 21.12.2025 issued under the signature of respondent No. 3 refusing to return the security money to the petitioners which were deposited by the petitioners vide Payment Orders in favour of the respondent No. 1 (Annexure-X) should not be directed to have been made without lawful authority and is of no legal effect and as to why the respondents should not be directed to return security money of Tk. 6,23,04,000/-, Tk. 6,23,04,000/- and Tk. 6,23,04,000/- deposited by the petitioners respectively vide Payment Order No. 0121694 dated 03.07.2024 of NRB Bank (Annexure-C), vide Payment Order No. ABA 3170528 dated 02.07.2024 of Islami Bank Bangladesh Limited (Annexure-H) and vide Payment Order No. ABA 3170529 dated 02.07.2024 of Islami Bank Bangladesh Limited in favour of the respondent No. 1 (Annexure-M) to the petitioners respectively and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Necessary facts for disposal of the instant Rule, in short, are that, the petitioners are fertilizers importers registered under the Directorate of

Agriculture Extension and they have valid certificates of registration till date. On 11.06.2024 the Respondent No.3 published an advertisement inviting the fertilizer importers to participate in a tender. Accordingly, the petitioners deposited 2% security money worth Tk.6,23,04,000/- (six crore twenty three lac and four thousand taka) each vide payment orders issued by NRB Bank on 03.07.2024, 02.07.2024 and 02.07.2024 respectively along with bank solvency certificates. The proposals submitted by the petitioners were accepted by the office of the respondent No. 3 on 08.07.2024 with some conditions. Due to the unrest in the political as well as economic situation prevailing in the country, the petitioners could not open Letter of Credit (L/C) and therefore they made representations on different dates before the respondent authority explaining their hardship. By the office order dated 17.07.2025, issued under the signature of the respondent No. 3, it was intimated to the Chairman of Bangladesh Fertilizer Association regarding forfeiture of tender security money of the petitioners along with others, who would fail to participate in the next year's tender process to import fertilizer for the year 2025-2026. Challenging this memo dated 17.07.2025 the petitioners filed Writ Petition No. 12523 of 2025 and obtained a Rule and also an order of stay of the impugned memo dated 17.07.2025. This Rule was subsequently discharged for non-prosecution by the order dated 30.12.2025.

During pendency of that writ petition, the writ petitioners, pursuant to the direction made in the aforesaid memo, participated in the fresh

Tender invited vide memo dated 03.09.2025 upon submitting all relevant papers as required in the tender proposal. Ultimately, the petitioners became unsuccessful in the bid. Their proposals were not accepted by the respondent No. 1 as those were found to be higher than the other bidders.

On 26.10.2025 the petitioners filed representations before the respondent No. 1 praying for refund of the security money deposited by them at the time of submitting the earlier tender proposals. Since the respondent authority did not take any step thereon, the petitioners filed another Writ Petition No. 20272 of 2025 before this Division. By the order dated 01.12.2025 a Division Bench was pleased to dispose of the said writ petition with a direction upon the respondent No. 1 to dispose of the applications dated 26.10.2025 submitted by the petitioners. Pursuant to that direction the respondent No. 3 by the memo dated 21.12.2025 informed the petitioners that there is no scope to make refund of the security money which have been deposited by the petitioners in favour of the respondent No. 1 as security money vide pay orders.

Being aggrieved by the memo dated 21.12.2025 and there having no other alternative and equally efficacious remedy available, the petitioners filed the instant writ petition and obtained the present Rule.

Learned Advocate Mr. Gazi M H Tamim appeared for Advocate Mr. Md. Golam Mahmud (Shaheen) on behalf of the petitioners. At the very outset learned Advocate submitted that, admittedly the petitioners participated in the tender for the year 2024-2025. The respondent authority accepted their proposals but due to the unrest situation

prevailing in the country during that time they could not open L/C in order to import fertilizer from abroad. Being constrained they filed representations before the respondent authority informing them about their incapability to open the L/C. The respondent authority considered their situation and by the memo dated 17.07.2025 allowed them to participate in the next year tender with the pay order which they already have deposited at the time of making the earlier proposal. However, it was stated in that memo that if they fail to adjust the amount by participating in the tender for the years 2025-2026, their submitted pay orders shall be forfeited.

Referring to Section 53 of the Public Procurement Act, 2006 and Rule 35 of the Public Procurement Rules of 2025 Learned Advocate strongly submitted that these provisions are very clear in this regard that security money shall be returned to the unsuccessful bidders after completion of the tender proceeding but the respondent authority has refused to refund the security money to the petitioners in clear violation of the law. Hence the impugned memo dated 21.12.2025 is liable to be declared to have been issued without any lawful authority.

Learned Advocate next submitted that, the impugned memo having being issued misconstruing the provision of clause 8(chha) of the notification dated 29.01.2025, the said memo is liable to be declared to have been passed without lawful authority and no legal effect.

He finally submitted that, the impugned memo having being passed in clear violation of the provision of Public Procurement Act and Public

Procurement Rule, it is liable to be set aside for ends of justice and the respondents may be directed to refund the security money to the petitioner which they are lawfully entitled to.

On the other hand, Mr. Mohammad Rashadul Hassan, learned Deputy Attorney General, entered appearance on behalf of respondent No. 1 i.e. the Secretary, Ministry of Agriculture and contested the Rule by filing an affidavit in opposition.

Learned Deputy Attorney General submitted that, after the petitioners' proposal were accepted by the respondent authority, they made a written representation to the respondent No. 1 praying for extension of only 15(fifteen) working days for opening the L/C, but they failed to deposit the security money in the Bank and were unable to import fertilizer in the whole fiscal year of 2024-2025 as per the tender. Considering the facts and circumstance the respondent authority allowed them to participate in the tender for the following year of 2025-26 using the security money deposited by them in the earlier tender with a condition that those who were given such chance have to be a lowest bidder, otherwise the security money will be forfeited. Having full knowledge of this condition, the petitioners participated in the following tender and therefore the instant writ petition is misconceived, misguided and misinterpreted. Hence, the Rule is liable to be discharged.

He next submitted that, the petitioners' previous tender for the year 2024-25 was accepted by the respondents and as per the circular dated 29.01.2025 the petitioners were obliged to deposit 4% security money and

if they fail to import, in that case such 4% will be forfeited by the authority as per the said circular. Petitioners are lawfully bound by the terms of the said circular and therefore the provisions of the Public Procurement Act are not applicable in the instant case.

Learned Deputy Attorney General further submitted that, according to clause 8 (chha) of the circular dated 29.01.2025 the respondent No. 1 is legally authorized not to refund the security money to the petitioners. Respondent No. 1 has acted lawfully and therefore, the Rule issued in this writ petition is liable to be discharged.

He finally submitted that, the claims of the petitioners are barred by the principles of estoppels, waiver and acquiescence. The writ petition is frivolous, misconceived and an abuse of the process of this Court and there being no violation of law the Rule is liable to be discharged for ends of justice.

We have heard the learned Advocate for the petitioners as well as the learned Deputy Attorney General and perused the writ petition, the supplementary affidavit, affidavit in opposition and all the documents annexed therewith.

It is admitted fact that all the three petitioners participated in the tender for the fiscal year of 2024-2025 for importing fertilizer from abroad and their proposals were accepted being the lowest bidders. It is also admitted that, initially the petitioners deposited 2% of earnest money while participating in the first tender. By the memo dated 08.07.2024 they

were asked to submit the rest 2% of the security money and the Letter of Credit (L/C) within seven days. It appears from Annexures-E, J and O that on 18.07.2024 the petitioners by making individual representations prayed for 15 more working days to open L/C and complete all other due diligence because of the reasons stated therein.

Annexure-P to the writ petition i.e. the memo dated 17.07.2025 manifests that, the respondent authority took into consideration of petitioners' representations and instead of forfeiting the earnest money or taking any immediate action as per law allowed the petitioners to participate in the subsequent tender for the following fiscal year of 2025-26 by carrying forward the amount already deposited. The memo is quoted below:

“উপর্যুক্ত বিষয় ও সূত্রের পরিপ্রেক্ষিতে জানানো যাচ্ছে যে, গত ২০২৪-২৫ অর্থবছরে বেসরকারি খাতে কার্যাদেশ প্রাপ্ত যে সকল সার আমদানিকারকগণ দেশের অস্থিতিশীল পরিস্থিতি, অবরোধ, সাধারণ ছুটি, বৈদেশিক মুদ্রার অভাব এবং সার সরবরাহকারী দেশ/প্রতিষ্ঠান সমূহ কর্তৃক যাচিত সংশ্লিষ্ট বৈদেশিক ব্যাংকের কনফার্মেশন না পাওয়ায় সার আমদানির লক্ষ্যে ঋণপত্র স্থাপন করতে পারেনি বা ঋণপত্র স্থাপন করে আংশিক সার আমদানি করেছেন তাদের জমাকৃত পে-অর্ডারসমূহ ২০২৫-২৬ অর্থবছরে সার আমদানির লক্ষ্যে দর প্রস্তাবে অংশগ্রহণ পূর্বক সমন্বয়ে ব্যর্থ হলে বাজেয়াপ্ত করা হবে মর্মে সিদ্ধান্ত গৃহীত হয়েছে।”

Accordingly, the petitioners took part in the following tender for the year of 2025-26 but this time they were not successful in the tender and therefore made applications before the authority for refund of their 2% security money. By the impugned memo dated 21.12.2025 the

respondent No. 3 denied to make the refund. Relevant part of the impugned memo is quoted below:

“০৩। বেসরকারি পর্যায়ে সার আমদানির ক্ষেত্রে বিগত ২৯ জানুয়ারি ২০১৫ তারিখে ইস্যুকৃত নন-ইউরিয়া সার আমদানি, বিক্রয় এবং ভর্তুকি বিতরণ/প্রদান পদ্ধতির অনুচ্ছেদ ৮ এর উপ-অনুচ্ছেদ 'ছ' এর বর্ণনা নিম্নরূপঃ

“আমদানিকারক প্রতিষ্ঠানকে আবেদন পত্রের সাথে নিরাপত্তা জামানত স্বরূপ মোট মূল্যের ২% পে-অর্ডার (সচিব, কৃষি মন্ত্রণালয় বরাবর) জমা দিতে হবে এবং কার্যাদেশ পেলে সংশ্লিষ্ট প্রতিষ্ঠানকে মোট মূল্যের আরো ২% পে-অর্ডার (অর্থাৎ মোট ৪%) হিসাবে জমা দিতে হবে। নির্ধারিত সময়সীমার মধ্যে সার সরবরাহে ব্যর্থ হলে পে-অর্ডারের ৪% অর্থ সরকারের অনুকূলে বাজেয়াপ্ত হবে এবং সার সরবরাহে সক্ষম হলে পে-অর্ডার সংশ্লিষ্ট আমদানিকারককে যথাসময়ে ফেরৎ দেয়া হবে।”

০৪। ২০২৪-২৫ অর্থ বছরে যেসকল আমদানিকারক ঋণপত্র স্থাপন করতে পারেনি তাদের জমাকৃত পে-অর্ডার সমূহ বাজেয়াপ্ত না করে তাদেরকে বিশেষ বিবেচনায় আরেকবার সুযোগ প্রদান অর্থাৎ ২০২৫-২৬ অর্থ বছরে সার আমদানির দর প্রস্তাবের সাথে জামানত হিসেবে পে-অর্ডার সমূহ সমন্বয় করার সুযোগ প্রদান করে গত ১৭/০৭/২০২৫ তারিখে সার ব্যবস্থাপনা ও মনিটরিং অধিশাখা হতে পত্র প্রেরণ করা হয়। উল্লেখ্য, প্রতিষ্ঠান তিনটি ২০২৫-২৬ অর্থ বছরে সার আমদানির দর প্রস্তাবে অংশ গ্রহণ করে সর্বোচ্চ দরদাতা হওয়ায় বর্ণিত প্রতিষ্ঠান সমূহকে কার্যাদেশ প্রদানের জন্য উপযুক্ত বিবেচিত হয়নি।

০৫। বর্ণিত অবস্থায়, মহামান্য আদালতের আদেশের প্রতি শ্রদ্ধাশীল হয়ে তাঁর প্রতিষ্ঠানের অবগতির জন্য জানানো যাচ্ছে যে, বেসরকারি পর্যায়ে সার আমদানির ক্ষেত্রে বিগত ২৯ জানুয়ারি ২০১৫ তারিখে ইস্যুকৃত নন-ইউরিয়া সার আমদানি, বিক্রয় এবং ভর্তুকি বিতরণ/প্রদান পদ্ধতির অনুচ্ছেদ ৮ এর উপ-অনুচ্ছেদ 'ছ' মোতাবেক জামানত বাবদ ২% পে-অর্ডারের অর্থ ফেরত প্রদান করার সুযোগ নেই মর্মে নির্দেশক্রমে অবহিত করা হলো।”

We have already seen that the petitioners admittedly have participated in the fresh tender for the year 2025-26 pursuant to the permission granted by the memo dated 17.07.2025 and it is also admitted

that, they being the highest bidders, did not get the work order this year. Therefore, as per the provision of Rule 35 of the Public Procurement Rules, 2025, the petitioners are lawfully entitled to get refund of their deposited security money as soon as the contract with the lowest bidder is completed as per the provision of Section 53 of the Public Procurement Act, 2006.

By the memo dated 17.07.2025 (Annexure-P) the respondent authority upon considering the facts and circumstances allowed the petitioners and others to participate in the new tender for the next year of 2025-26, which means that their participations in the tender year 2025-26 shall be considered to be a fresh participation.

Learned Deputy Attorney General in his affidavit in opposition stated that the petitioners were given permission by the memo dated 17.07.2025 to participate in the fresh tender with a condition that they will have to be lowest bidders otherwise the security money already deposited will be forfeited. We find this statement to be misconceived and without any lawful basis. There is no such assertion made in the memo dated 17.07.2025. By permitting the petitioners to participate in the subsequent tender on the basis of the earlier deposit, the respondents consciously waived the consequence of the petitioners' previous default. Having treated the deposited amount as a valid security for the subsequent tender process, the respondents cannot subsequently revive the earlier default and rely upon the same as a ground for retaining the amount. Admittedly in the subsequent tender process the petitioners were not selected and

other bidders were awarded the contract. Consequently, the purpose for which the earnest money had been retained ceased to exist. Since the petitioners did not become the successful tenderer in the second tender, no occasion arose for forfeiture of the security amount in connection with that tender. As soon as the respondent authority allowed the petitioners to take part in the next year tender, they ought to have considered it as a fresh participation and therefore, the petitioners should have been dealt with in the appropriate manner as per law. Law is very clear in this regard that after completion of the tender process, the security money of the unsuccessful bidders should be refunded.

Rule 35 of the Public Procurement Rules, 2025 provides as follows:

“৩৫। দরপত্র জামানত ফেরত প্রদান।-

- (১) দরপত্র উন্মুক্ত করণের পর দরপত্র উন্মুক্ত করণ কমিটি কর্তৃক কোনো দরপত্র জামানত দরপত্র দাতাকে ফেরত দেওয়া যাইবে না।*
- (২) ক্রয়কারী কর্তৃক মূল্যায়ন প্রতিবেদন অনুমোদনের অব্যবহিত পর অগ্রহণযোগ্য দরপত্র সমূহের দরপত্র জামানত, ধারা ৫৩-এর বিধান সাপেক্ষে, ফেরত দিতে হইবে।*
- (৩) ক্রয়কারী কর্তৃক মূল্যায়ন প্রতিবেদন অনুমোদনের পর মূল্যায়িত গ্রহণযোগ্য ১ম, ২য় ও ৩য় সর্বনিম্ন দরপত্রের জামানত ব্যতীত অন্যান্য মূল্যায়িত গ্রহণযোগ্য দরপত্র দাতাগণের দরপত্র জামানত, আইনের ধারা ৫৬-এর বিধান সাপেক্ষে, তাহাদের আবেদনের পরিপ্রেক্ষিতে ফেরত দেওয়া যাইবে।*
- (৪) সর্বনিম্ন মূল্যায়িত গ্রহণযোগ্য দরপত্রের দরপত্রদাতার সহিত চুক্তি স্বাক্ষরের পরেই কেবল অবশিষ্ট দরপত্র সমূহের দরপত্র জামানত ফেরত দেওয়া যাইবে, তবে সকল ক্ষেত্রেই দরপত্র জামানত বৈধতার মেয়াদ উত্তীর্ণ হইবার পূর্বেই ফেরত প্রদান করিতে হইবে।”*

Section 53 of the Public Procurement Act, 2006 provides as follows:

“৫৩। দরপত্র প্রক্রিয়ার পরিসমাপ্তি।-

ক্রয়কারী কৃতকার্য দরপত্রদাতার সহিত চুক্তি স্বাক্ষরের পর, অন্যান্য দরপত্রদাতাদের তাহাদের অকৃতকার্য হওয়ার বিষয়টি লিখিতভাবে অবহিত করিবে এবং তাহাদের দরপত্র জামানত ফেরত দিবে।”

From the documents annexed to the writ petition we have seen that, for the fiscal year of 2025-2026 work orders have been given to one M/s. Sufala Trading Corporation, Saifullah Takwa and M/s. Mosharraf and Brothers, which has also been admitted by the respondent in the impugned memo dated 21.12.2025. Considering the provision of the Public Procurement Act, 2006 and Public Procurement Rule, 2025 we hold that the petitioners are very much eligible to get refund of their 2% security deposit.

Hence, we find that the impugned memo dated 21.12.2025 is misconstrued and misinterpreted and the refusal to make refund of the security money to the petitioners is without any lawful basis and accordingly it is hereby set aside. The continued retention of the petitioners' money is also without any lawful authority and is of no legal effect.

In view of the facts and circumstances and with the discussion made hereinabove, we find that there is substance in the submissions made by the learned Advocate for the petitioners and there is merit in the Rule.

In the result, the Rule is made absolute.

However, without any order as to costs.

The respondents are directed to refund the petitioners' deposited 2% security money vide *Payment Order No. 0121694 dated 03.07.2024 of NRB Bank (Annexure-C)*, *Payment Order No. ABA 3170528 dated 02.07.2024 of Islami Bank Bangladesh Limited (Annexure-H)* and *Payment Order No. ABA 3170529 dated 02.07.2024 of Islami Bank Bangladesh Limited (Annexure-M)* in favour of the respondent No. 1 in accordance with law within 60(sixty) days of receipt of this judgment and order.

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

Justice Sashanka Shekhar Sarkar, J:

I agree.