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

WRIT PETITION NO. 14137 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:

National Development Engineers Ltd.
..... Petitioners.

-Versus-

The Government of the People's Republic of Bangladesh and others.
..... Respondents.

Mr. Md. Zahangir Kabir, Advocate with
Mr. Md. Saiful Alam Chowdhury, Advocate
..... For the petitioner.

Mr. Md. Ruhul Quddus Kazal,
Attorney General with
Mr. Mohammad Osman Chowdhury, DAG
Mr. Akhtar Hossain Md. Abdul Wahab, D.A.G.
Mr. Al Faishal Shiddique, DAG
Mr. Rakib Hossain, AAG
Mr. Golam Rajib, AAG and
Md. Fuad Hasan, AAG
..... For the Respondent No.1.

Mr. A.M. Mahbub Uddin, Senior Advocate with
Mr. Md. Kaiaruzzaman, Advocate
..... For the Respondent Nos.2.

Present:
Mr. Justice Md. Toufiq Inam
And
Mr. Justice Mahmud Hasan

Heard on: 12.11.2026 and
Judgment delivered on: 12.11.2026.

Md. Toufiq Inam, J:

Following the initial hearing of the application under Article 102 of the Constitution, this Rule Nisi was issued on 14.10.2026, calling upon the respondents to show cause as to why the impugned letter contained in Memo No. 27.24.0000.021.07.055.20.947 dated 13.09.2026, issued by respondent No. 2, debarring the petitioner for a period of 2 (two) years under GCC Clause 95.1(d) of the contract dated 03.06.2021 between the petitioner and the Dhaka Electric Supply Company Limited (DESCO), should not be declared to have been issued without lawful authority and to be of no legal effect, and/or such other or further order or orders should not be passed as to this Court may seem fit and proper.

The case of the petitioner, in brief, is that the petitioner, a construction company, entered into a contract with DESCO on 03.06.2021 for execution of certain works. Subsequently, disputes arose between the parties concerning, amongst other matters, variation of works, payment for the works executed, termination of the contract and encashment of the performance guarantee.

It is stated that the petitioner instituted Writ Petition No. 8255 of 2025 on 18.05.2025 and obtained a Rule Nisi along with an order of status quo concerning encashment of the performance guarantee. Thereafter, by filing a supplementary application challenging the termination letter, the petitioner obtained a supplementary Rule Nisi on 27.05.2025.

DESCO, being aggrieved by the interim orders, preferred Civil Petition for Leave to Appeal No. 2295 of 2025 before the Appellate Division. The Appellate Division, by order dated 09.07.2025, stayed the operation of the order of status quo and the consequential direction passed by this Division. Consequently, the performance guarantee was encashed on

14.07.2025. Subsequently, the Rule in the said writ petition was discharged for non-prosecution.

It is the further case of the petitioner that, following termination of the contract, disputes between the parties remained unresolved. The petitioner alleges that the respondents failed to approve the necessary variation of works despite the passage of considerable time, although such approval was essential for proceeding with the additional works under the contract. Reliance has been placed upon Sub-Clause 65.6 of the General Conditions of Contract and Rules 79(2) and 80(3) of the Public Procurement Rules, 2008.

The petitioner also alleges that the performance guarantee was encashed without due compliance with the contractual requirements, particularly Sub-Clauses 79.6 and 79.7 of the General Conditions of Contract, and without proper assessment of the work executed and the amounts, if any, lawfully recoverable from the petitioner.

It is further stated that, following termination of the contract, the petitioner made a representation dated 14.09.2025 seeking permission to remove its construction equipment and materials from the project site, but the respondents did not take any effective steps in that regard. The petitioner also made an application dated 14.07.2026 seeking an amicable settlement of the disputes or, alternatively, their resolution through arbitration.

In the meantime, after a considerable lapse of time from the termination of the contract, respondent No. 2 issued the impugned letter dated 13.09.2026, debarring the petitioner for a period of two years under GCC Clause 95.1(d). The petitioner contends that such debarment was imposed without following the procedure prescribed under Rule 127 of

the Public Procurement Rules, 2008 and Rule 149 of the Public Procurement Rules, 2025, as well as without complying with the relevant contractual provisions, particularly Clauses 65.1 and 65.2 of the General Conditions of Contract.

On these premises, the petitioner contends that the impugned decision is arbitrary, procedurally unlawful and unsustainable in law.

Mr. Md. Saiful Alam Chowdhury, learned Advocate appearing along with Mr. Md. Zahangir Kabir for the petitioner, submits that the impugned debarment order has been issued in violation of the mandatory procedure prescribed under the applicable Public Procurement Rules and the General Conditions of Contract. He argues that the respondents could not lawfully impose a two-year debarment merely on the basis of the previous contractual disputes between the parties, particularly when the legality of the termination and other consequential matters remains disputed.

He further submits that the petitioner has already invoked the jurisdiction of the competent Court under section 12 of the Arbitration Act, 2001, in respect of the disputes arising out of the contract, and the proceedings are pending. According to him, the respondents, instead of taking appropriate steps for resolution of the disputes, have resorted to an independent punitive measure by debarring the petitioner.

He particularly emphasises that the respondents did not approve the proposed variation of works within the stipulated period, thereby placing the petitioner in a situation where it could not reasonably proceed with the additional works. He also contends that the encashment of the performance guarantee and the subsequent debarment have been undertaken without proper consideration of the petitioner's contractual

rights and entitlements. He, therefore, submits that the impugned decision, having been taken without compliance with the prescribed procedure and without lawful justification, is liable to be declared without lawful authority and of no legal effect.

Mr. Md. Ruhul Quddus, learned Attorney General, appearing along with Mr. Mohammad Osman Chowdhury, learned Deputy Attorney General for respondent No. 1, and Mr. A. M. Mahbub Uddin, learned Senior Advocate, appearing along with Mr. Md. Kaiaruzzaman, learned Advocate for respondent No. 2, oppose the Rule.

The learned Attorney General submits that the writ petition is misconceived and that the impugned decision has been taken in accordance with the applicable contractual provisions. He submits that the contractual relationship between the parties had already come to an end following termination of the contract and that the subsequent proceedings initiated by the petitioner concerning the performance guarantee did not prevent DESCO from taking appropriate action under the contract.

He further submits that the petitioner had previously approached this Division in Writ Petition No. 8255 of 2025, but the interim protection sought by the petitioner was subsequently stayed by the Appellate Division. The performance guarantee was thereafter encashed. In the circumstances, he argues that the petitioner cannot seek to reopen the underlying contractual disputes through the present writ petition, particularly when the petitioner has already invoked the statutory mechanism for resolution of the disputes under the Arbitration Act, 2001. Accordingly, the learned Attorney General submits that no case has been made out warranting interference by this Division under Article 102 of the Constitution and prays for discharge of the Rule.

We have heard the learned Advocates for the respective parties, perused the writ petition, the affidavit-in-opposition and the materials placed before us.

The principal question requiring determination is whether the decision of DESCO to debar the petitioner for a period of two years under GCC Clause 95.1(d), in the circumstances of the present case, calls for interference by this Division in exercise of its constitutional jurisdiction.

At the outset, it is necessary to appreciate the distinction between a contractual dispute and a challenge to the legality of an administrative decision taken in consequence of such a dispute. The existence of a contractual relationship between the parties does not place every decision taken by a public authority beyond the scrutiny of this Court. Where an administrative decision is alleged to have been taken without jurisdiction, in violation of a mandatory statutory procedure, or in breach of the principles of natural justice, the constitutional jurisdiction of this Division is not automatically excluded merely because the dispute has its origin in a contract.

Equally, however, the constitutional jurisdiction under Article 102 is not intended to provide an alternative forum for the determination of disputed contractual claims, particularly where the parties have agreed to resolve such disputes through arbitration or another legally recognised mechanism.

In the present case, the materials on record indicate that substantial disputes have arisen between the parties concerning the execution and variation of works, termination of the contract, payment for the works allegedly executed, encashment of the performance guarantee and the

consequential rights and liabilities of the parties. Significantly, the petitioner has already invoked the jurisdiction of the competent Court under section 12 of the Arbitration Act, 2001, and the proceedings are stated to be pending.

The allegations concerning the failure to approve variation orders, non-payment for the works executed, wrongful encashment of the performance guarantee and the petitioner's entitlement to recover consequential losses are matters which substantially depend upon the interpretation of the contractual provisions, examination of the relevant correspondence, assessment of the works executed and determination of the respective obligations of the contracting parties. Such matters are more appropriately considered in the proceedings initiated under the Arbitration Act, 2001, where the parties may adduce relevant evidence and establish their respective claims and defences.

This Division, in exercising its jurisdiction under Article 102, is not inclined to undertake such an examination or adjudicate upon the underlying contractual disputes in the present proceedings.

We are, however, conscious that the challenge in this writ petition is directed against the subsequent decision of debarment, which is distinguishable from the underlying contractual claims. The pendency of arbitration proceedings cannot, by itself, validate an otherwise unlawful administrative decision, nor can it deprive an aggrieved party of the right to question a decision alleged to have been made in violation of mandatory statutory requirements.

In this regard, the petitioner has relied upon Rule 127 of the Public Procurement Rules, 2008, Rule 149 of the Public Procurement Rules, 2025 and Clauses 65.1 and 65.2 of the General Conditions of Contract.

However, a mere reference to statutory provisions and contractual clauses, without demonstrating the precise manner in which their mandatory requirements have been violated, does not establish a ground for constitutional interference.

The burden lies upon the petitioner to place sufficient materials before this Court demonstrating that the impugned decision was taken by an authority lacking the requisite jurisdiction, that a mandatory procedural safeguard was disregarded, or that the decision was otherwise vitiated by arbitrariness, mala fide or a failure to comply with the applicable law.

Upon examination of the materials placed before us, we do not find sufficient grounds to conclude that the impugned decision is, on its face, without jurisdiction or that the petitioner has established a specific violation of a mandatory statutory requirement warranting interference under Article 102 of the Constitution. The petitioner's reliance upon the disputed circumstances surrounding the variation of works, termination of the contract and encashment of the performance guarantee cannot, without further examination of the relevant contractual obligations and evidence, establish that the subsequent decision of debarment is necessarily unlawful.

Nevertheless, the existence of those proceedings, together with the pending arbitration proceedings, demonstrates that the underlying contractual disputes have not yet been finally determined. We are not persuaded that the materials presently before us justify converting this constitutional proceeding into an adjudication of those disputed matters. It is also relevant that the petitioner has already approached the competent forum for resolution of the disputes arising out of the contract.

In the circumstances, we are of the considered view that the petitioner has failed to establish a sufficient legal basis for interference with the impugned decision in the present proceedings. The allegations concerning the contractual performance, variation of works, termination and financial consequences are matters to be determined in the appropriate proceedings, while the materials placed before us do not establish an independent ground warranting the exercise of our extraordinary constitutional jurisdiction.

For the reasons stated above, we find no sufficient ground to interfere with the impugned decision in exercise of our jurisdiction under Article 102 of the Constitution.

Accordingly, the Rule is discharged.

There shall be no order as to cost.

(Justice Md. Toufiq Inam)

Mahmud Hasan, J:

I agree.

(Justice Mahmud Hasan)

Ashraf/ABO.