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

Writ Petition No. 472 of 2015

IN THE MATTER OF:
An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Ecotech Consultants Limited, represented by its Managing Director, M. H. Khan Monju, 38/C, Mirpur Road, New Market, Dhaka- 1205.

----Petitioner.

-Versus-

The Government of Bangladesh, represented by the Secretary, Ministry of Shipping, Bangladesh Secretariat, Raman, Dhaka and others

----Respondents.

Mr. Md. Tahid Uddin Shepon, Advocate

----For the Petitioner.

Mr. Saifur Rashid, Advocate

----For the Respondent Nos. 2-5.

Mr. Md. Azmir Fakir with
Mr. Mohammad Ashraf Uddin Bhuiyan, Advocates

----For the Respondent No. 6.

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice S. M. Saiful Islam

Heard on: 14.06.2026
Date of Judgment: 28.06.2026.

S. M. Saiful Islam, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued in the following terms:

> "Let a Rule Nisi be issued calling upon the Respondents to show cause as to why the impugned memo being সূত্র নং- ১৮.১৫১.০১.০৫.০৪.০০৯১.২০০৭-৯৩১ dated 14.12.2014 (Annexure-K) signed and issued by the respondent No. 4 requesting the petitioner to pay an amount of Tk. 19,17,012/- only as the outstanding amount against the fare and other charges of the Tanker T-1052 should not be declared to be illegal, without lawful authority and is of no legal effect and / or pass such other or further order or orders as to this Court may seem fit and proper."

The brief facts, as set out in the writ petition, are that the petitioner is a reputed shipping company registered under the Companies Act, 1913. The Bangladesh Inland Water Transport Corporation (hereinafter referred to as the BIWTC) floated a tender inviting bids for the charter of one of its vessels, namely, "Tanker T-1052". The petitioner, as the highest bidder was awarded the Charter Party following approval from all competent authorities, including the Ministry of Shipping. Accordingly, on 05.07.2007, a Charter Party agreement (Annexure - A) was executed for an initial period of 5 (five) years. The monthly rental was fixed at Tk. 3,75,950/- (Three Lac Seventy Five Thousand Nine Hundred and Fifty). In accordance with the terms, the petitioner deposited Tk. 15,03,800/- (Fifteen Lac Three Thousand and Eight Hundred) as a security deposit and furnished a Bank Guarantee amounting to Tk. 41,00,000/-(Forty One Lac).

Thereafter, the petitioner purchased new engines, machineries and other materials and carried out extensive structural repairs to the tanker with a view to modernizing it and making it seaworthy. The reconstruction and renovation of the tanker took a considerable period of time, during which the petitioner had to continue paying the charter rent. According to amended Rule 6 of the Rule for Charter of Vessels of BIWTC (Annexure-C), upon expiry of the initial term of the charter party, the lease was extendable for a further period of 5 (five) years with an enhancement of charter fare up to 15%. In the legitimate expectation that the charter party would be extended for further period of 5 (five) years in accordance with the amended Rules, the petitioner invested Tk. 1,26,00,525/- (One Crore Twenty Six Lac Five Hundred and Twenty Five) in repairing, reconstructing and modernizing the tanker.

Thereafter, the petitioner addressed several letters to BIWTC requesting extension of the charter party for further period of 5(five) years by enhancing the charter fare up to 15% in terms of the amended Rules. However, BIWTC did not respond to those letters. Finding no other alternative, the petitioner filed Writ Petition No. 9566 of 2012 seeking the direction upon the respondents to extend the charter party dated 05.07.2007 for a further period of five years by increasing the charter fare up to 15%. Upon hearing that writ petition, a Rule was issued directing the respondents to dispose of the petitioner's application within 60 (sixty) days. The respondents were also directed to maintain status quo for the said period. Subsequently, the Rule was discharged on 28.01.2014 for non prosecution. While the aforesaid Rule was pending for hearing, respondent No. 4, by letter dated 11.02.2013, informed the petitioner that there was no scope for considering his prayer for extension of the charter party. Having thus lost all hope for extension, the petitioner, by letter dated 24.11.2013, requested respondent No. 4 to take back possession of the tanker.

Finally on 25.6.2014, the respondents took back possession of the said tanker from the petitioner. Thereafter, respondent No. 4, by Memo dated 26.08.2014, requested the petitioner to pay Tk. 3,15,313/- (Three Lac Fifteen Thousand Three Hundred and Thirteen) as the charter fare for the period from 01.05.2014 to 26.05.2014 and the petitioner duly paid the said amount. Subsequently, respondent No. 4 issued the impugned memo dated 14.12.2014 demanding payment of Tk. 19,17,012/- (Nineteen Lac Seventeen Thousand and Twelve) as the alleged outstanding charter fare and other charges in respect of the said Tanker (Annexure- K). Being aggrieved by the said impugned Memo, the petitioner filed the instant writ petition and obtained the Rule.

At the time of issuance of the Rule, operation of the impugned memo dated 04.12.2014 was stayed for a period of 3 (three) months and subsequently it was extended from time to time.

The Rule was contested by respondent Nos. 2-6, who entered appearance and filed an affidavit-in-opposition denying all the material allegations set forth in the writ petition. The statements made in the affidavit-in-opposition, in brief, are that the petitioner entered into a lease agreement with the BIWTC on 05.07.2007 for taking the Tanker T- 1052 on charter for a period of 5 (five) years. Before expiry of the lease tenure, the petitioner applied to the BIWTC by letters dated 26.05.2012, 06.06.2012 and 11.06.2012 for renewal of the lease for a further period of 5 (five) years from the date of its expiry with an enhancement of the charter fare by 15% in accordance with Rule 6 of the amended Rules for the Charter of vessels.

It is further stated that without allowing BIWTC a reasonable time to dispose of the said applications, the petitioner filed Writ Petition No. 9566 of 2012 before the High Court Division. During the pendency of the writ petition, BIWTC rejected the applications of the petitioner on the ground that renewal of the charter was not commercially viable. Ultimately, on 28.01.2014, the Rule issued in the said petition was discharged for non-prosecution.

According to the respondents, although the lease agreement expired on 05.07.2012, the petitioner failed to return the vessel to the BIWTC and continued to illegally possess it until 26.05.2014, when the tanker was finally handed back to BIWTC. Thereafter, by Memo dated 14.12.2014, BIWTC demanded payment of Tk. 19,17,012/- (Nineteen Lac Seventeen Thousand and Twelve) as outstanding charter rental and other charges for the period from 20.08.2012 to 26.05.2014 and 01.05.2014 to 26.05.2014 including an additional 15% enhancement of the charter rental per month as per amended Rules of 2008. Since the petitioner failed to pay the said amount, the BIWTC applied to the Bank for encashment of the Bank Guarantee furnished by the petitioner for adjustment of the outstanding dues. The respondents assert that to frustrate the recovery of the said amount, the petitioner has filed the instant writ petition.

The respondents have further stated that the petitioner had earlier filed Writ Petition No. 4561 of 2009 in which the Rule was discharged on the ground that the Charter Party in question is purely a trading contract and as such writ is not maintainable. According to them, the present writ petition also is not maintainable on the same ground.

Mr. Tahid Uddin Shipon, the learned Advocate, appearing for the petitioners, submits that the impugned memo is *ex facie mala fide*, motivated and arbitrary and therefore, not tenable in law. He contends that the earlier Memo dated 26.08.2014 clearly mentioned that after adjusting the outstanding dues against the security deposit, the balance amount payable by the petitioner was Tk. 3,15,313/- (Three Lac Fifteen Thousand Three Hundred and Thirteen) which the petitioner duly paid. Therefore, the subsequent demand of Tk. 19,17,012/- (Nineteen Lac Seventeen Thousand and Twelve) made by the impugned Memo is self-contradictory and not tenable in law. He further submits that the impugned Memo does not disclose the basis or the manner in which the alleged outstanding amount was calculated. According to him, the impugned memo is arbitrary, whimsical, vague and without any legal basis. On these grounds, the learned counsel for the petitioner prays for the Rule to be made absolute.

Conversely, the learned Advocate, Mr. Saifur Rashid, appearing for the Respondent Nos. 2-5 submits that the writ petition is not maintainable as it arises out of a Charter Party which is purely a trading contract and there is nothing on record to show that BIWTC was acting in the discharge of any statutory, public or sovereign function. He also submits that it is now well settled disputes arising out of purely commercial contract are beyond the ambit of writ jurisdiction.

The learned Advocate further submits that the present writ petition involves a number of factual issues which cannot be resolved without recording evidence and therefore, cannot be decided under the writ jurisdiction. He also submits that the petitioner filed the writ petition without first exhausting the arbitration process which is mandatory under the provisions of Rule 42 of The Rules for Charter of Vessel and clause 27 of the Lease Agreement. According to him, the present writ petition is also not maintainable on that count. On these grounds, the learned Advocate for the Respondents prays for discharge of the Rule.

The learned Advocate, Mr. Md. Azmir Fakir appearing for the Respondent No. 6 also prays for discharge of the Rule on the aforementioned grounds.

We have heard the learned Advocates of both sides, perused the application and affidavit in opposition and the Annexures thereto.

It is an admitted position that the petitioner entered into a charter party agreement with the BIWTC on 05.07.2007 for taking lease of Tanker T- 1052 for a period of 5 (five) years. Before expiry of the lease, the petitioner applied to the BIWTC for renewal of the charter party agreement for a further period of 5 (five) years which was not considered by the BIWTC and ultimately on 26.05.2014, the petitioner returned the Tanker to the BIWTC.

A perusal of the impugned memo dated 14.12.2014 (Annexure- K) reveals that the BIWTC claimed a sum of Tk. 19,17,012/- (Nineteen Lac Seventeen Thousand and Twelve) from the petitioner as charter rental, conservancy charge, *chabak, mabak* and other related charges in respect of the said Tanker. The petitioner, on the other hand, contends that he has already paid all the dues and that no amount remains outstanding. Thus, the question of whether the amount claimed in the impugned memo is actually payable by the petitioner is a disputed question of fact, which can only be resolved upon production and examination of evidence. It is well settled that such disputed question of fact cannot ordinarily be adjudicated in writ jurisdiction.

In HBRI Vs. Darus-Salam Co-operative Society [54 DLR (AD) 111] the Apex Court held that matter seriously contentious in nature requiring adjudication on the basis of evidence of detailed nature is outside the scope of writ jurisdiction. In the present case also, it is not possible to conclusively determine from the materials on record as to whether the charter rental and other charges as mentioned in the impugned memo are in fact due from the petitioner. Resolution of this issue necessarily depends upon the production and evaluation of evidence by the parties. On this Count, we are of the view that the writ jurisdiction should not be exercised in the present case.

On the other hand, it is an admitted fact that the petitioner entered into a charter party contract with BIWTC on 05.07.2007 in respect of a Tanker Vessel (Annexure- F) and the present dispute arises out of that contract. It is now well settled that writ jurisdiction cannot be invoked for contracts which are simple commercial or trading contract and which are not rooted in any statute. It has been held by our Apex Court in GEMS International Vs. Gramsieco Ltd. [15 BLC (AD) 222] that unless the contract has been entered into by a statutory authority pursuant to a statutory provision and violation of such statutory provision is established, no remedy is available in the writ jurisdiction. The same principle was adopted by our Apex Court in PDB and others Vs. Md. Asaduzzaman Sikder [8 MLR (AD) 241].

Moreover, upon perusal of the Rules for Charter of Vessels (Annexure- C), it appears that Rule 42 contains the provisions for arbitration to settle disputes between the parties. The provisions of Rule 42 are as follow:

> "বিআইডব্লিউটিসি ও লীজ/চার্টার গ্রহীতার মধ্যে উদ্ভূত সমস্যা উভয় পক্ষের মধ্যে আলাপ-আলোচনার মাধ্যমে নিরসন করতে হবে। উভয়পক্ষের মধ্যে আলোচনার মাধ্যমে সমস্যা নিরসন করা সম্ভব না হলে বিআইডব্লিউটিসির বোর্ডের নিকট বিষয়টি উপস্থাপন করতে হবে এবং বোর্ডের সিদ্ধান্ত উভয়পক্ষ মেনে নেবে। এরপরও সমস্যা নিরসন সম্ভব না হলে আরবিট্রেশন এ্যাক্ট ১৯৪০/২০০১ অনুযায়ী উভয়পক্ষ পদক্ষেপ গ্রহণ করে সমস্যা সমাধান করবে।"

Thus, it appears from the BIWTC Rules for Charter of Vessels that it contains provisions for arbitration as an alternative forum to settle the dispute between the parties. However, the petitioner did not invoke the arbitration process provided therein, nor has he offered any explanation in the writ petition as to why he failed to avail himself of that remedy. Accordingly, it is evident that the petitioner has not exhausted the alternative forum where an equally efficacious remedy is available. On this ground as well, the present writ petition is not maintainable.

In view of the facts, circumstances, and discussions made above, we are of the view that the instant writ petition is devoid of merit and is not maintainable. So, the Rule Nisi is liable to be discharged.

In the result, the Rule Nisi is discharged without any order as to costs.

The order of stay granted at the time of issuance of the Rule and extended time to time is hereby recalled and vacated.

Communicate this judgment and order forthwith.

<u>**Md. Iqbal Kabir, J:**</u>

I agree.