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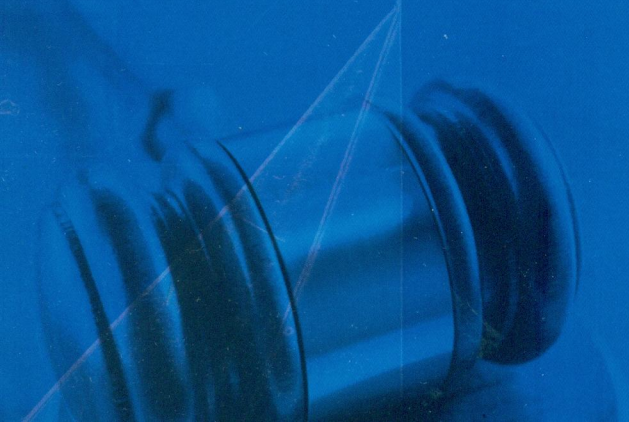
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CIVIL APPEAL N0. 16 OF 2004.

(From the judgment and order dated the 27th day of April, 1999 passed by the Administrative Appellate Tribunal in Administrative Appellate Tribunal Appeal No. 185 of 1999).

Government of Bangladesh .... Appellant.

Vs.

Md. Khan Harun being dead his heirs Mrs. Anowara Begum alias Maina, wife of late Khan Harun and others ..... Respondents.

For the Appellant: Mr. Murad Reza, Additional Attorney General instructed by Mrs. Sufia Khatun, Advocate-on-Record.

For the Respondents: Mr. Md. Nawab Ali, instructed by Advocate-on-Record.

Judgment: March 13, 2013

Administrative Tribunal Act, 1980 (Amended by Act XXIV of 1997)–

Section 6(2A)– Appeal against an order or decision of an Administrative Tribunal may within 3 (three) months from the making the order or decision can be filed and sub-section (2A) of section 6 by Act XXIV has further provided that an appeal may be admitted after the period of 3 (three) months specified in that sub-section but obviously not later than 6 (six) months, if the Appellant can satisfy the Administrative Appellate Tribunal.

However, we find nothing wrong with the finding of the Administrative Appellate Tribunal that the delay of 57 days in the office of the chief Conservator simply for coming to a decision as to whether any appeal was to be filed, was not a satisfactory explanation in preferring the appeal beyond three months. Thus, we come to the conclusion that the Administrative Appellate Tribunal did not commit any error of law in coming to the ultimate decision rejecting the Memorandum of Appeal on the ground of limitation. ..... (Para 11)

JUDGMENT

MD. ABDUL WAHHAB MIAH–J: This appeal, by leave, has arisen out of the judgment and order dated the 27th day of April, 1999 passed by the Administrative Appellate Tribunal, Dhaka in Administrative Appellate Tribunal Appeal No. 185 of 1999 rejecting the Memorandum of appeal.

2. The respondent as petitioner (hereinafter referred to as the petitioner) filed an application before the Administrative Tribunal, Dhaka under section 4 of the Administrative Tribunal Act, 1980 (the Act) for declaration that the order dated 26.04.1994 removing him from service and the order dated 17.06.1995 rejecting the appeal, were illegal, void and not binding upon him and also for an order to reinstate him in service with all financial benefits.

3. The Divisional Forest Officer, Coastal Forest Plantation Division, Patuakhali by his order dated 05.07.1993 framed charge against the petitioner on the allegation that he had left the office after submitting application for casual leave for five days from 05.01.1993 to 09.01.1993 without permission. He did not come back after expiry of the period and remained absent up to 06.04.1993 unauthorisedly without leave and thereby committed the offence of mis-conduct and desertion defined under rule 3(6)(C) of the Government Servants (Discipline and Appeal) Rules, 1985.

4. The allegation was inquired into and the Inquiry Officer found the petitioner guilty. The authority, thereafter, considering the inquiry report and other papers, imposed penalty upon the petitioner removing him from service by order dated 26.04.1994. Against the said order of removal, the petitioner filed a departmental appeal before the higher authority. The appeal was rejected on 17.06.1995. The order of rejection was received by him on 02.07.1995. Being aggrieved by and dissatisfied with the said two orders, the petitioner filed the application before the Administrative Tribunal for the reliefs aforementioned. The application was registered as Administrative Tribunal Case No.241 of 1995.

5. The case was contested by opposite party Nos.2 and 3 of the Administrative Tribunal case (they are not the appellants before this Court) by filing a written objection. Their case was that the petitioner was absent from office for three months from 05.01.1993 to 06.04.1993 without leave or permission and thereby committed the offence of mis-conduct. On inquiry, the offence was proved and the authority considering the offence committed by the petitioner imposed penalty upon him removing from service. In awarding the punishment, no illegality was committed.

6. The Administrative Tribunal on hearing the case by its decision dated 23.05.1999 allowed the same and set aside the order dated 26.04.1994 removing the petitioner from service and the order dated 17.06.1995 rejecting his appeal. The Tribunal also directed the opposite parties to reinstate the petitioner in service. The Tribunal further directed that the period of absence from "05.01.1999 to the date of reinstatement be dealt with according to the leave rules."

7. Against the said decision of the Administrative Tribunal, the Conservator of Forest, Coastal Circle, Dhaka who was opposite party No.3 in the case filed Administrative Tribunal Appeal No. 185 of 1999 before the Administrative Appellate Tribunal, Dhaka out of time by 2(two) months and l(one) day. An application along with the Memorandum of Appeal was filed for condoning the delay in filing the same. The Administrative Appellate Tribunal by the impugned decision refused to condone the delay with the finding as follows:

> "It will appear that there is no satisfactory explanation for the inordinate delays of 24 days in making the application for the certified copy of the judgment and also of 57 day in the Chief Conservator's Office simply for coming to a decision as to whether any appeal was to be filed."

From the impugned decision, it further appears that in support of the prayer for condonation of delay, reliance was placed on the observations made by this Division in the case of Abdul Kader Mondal and others-vs-Shamsur Rahman Chowdhury @ Shamsur Rahman Saha, 51 DLR (AD) 253 that refusal to condone delay "can result a meritorious matter being thrown out without any hearing whatsoever." The Appellate Tribunal did not put any reliance upon the aforesaid observations of this Division on the view that the facts of the cited case were quite distinguishable.

8. Being aggrieved by and dissatisfied with the decision of the Administrative Appellate Tribunal, the appellant herein, Bangladesh, represented by the Secretary, Ministry of Forest, filed Civil Petition for Leave to Appeal No.644 of 2000 before this Division and leave was granted on the 30th of April, 2002 to consider the submissions of the learned Deputy Attorney General to the effect.

> "Mr. Farid Ahmed, the learned Deputy Attorney General has submitted (1) that the Appellate Tribunal erred in law in not considering that appeal was filed within statutory period of limitation of 6 months and explanation given in the application for condonation of delay is satisfactory and bonafide. (II) that the tribunal erred in law in holding that in penalty was imposed upon the respondent under the provision of government servant (Discipline and Appeal) Rules, 1985 but, the affirms comes under the provision of government servant (Special Provision) Ordinance 1970 and in allowing the appeal upon such finding and thereby failed to differentiates between desertion and absent and without being satisfied as to the bonafide of absence."

9. Mr. Murad Reza, learned Additional Attorney General, appearing for the appellant, has argued the points on which leave had been granted.

10. Mr. Md. Nawab Ali, learned Advocate-on-Record, appearing for the respondents, on the other hand, has supported the impugned decision.

11. From the leave granting order, it appears that leave was granted to consider two submissions of the learned Deputy Attorney General made during the hearing of the leave petition.

Let us consider the first submission first. The appeal against an order or decision of an Administrative Tribunal has been provided for in section 6 of the Act. Sub-section (2) of section 6 thereof has provided' that any person aggrieved by an order or decision of an Administrative Tribunal may, within 3(three) months (originally it was two months) from the date of making the order or decision, prefer an appeal to the Administrative Appellate Tribunal, and sub-section (2A) (this sub-section was inserted in section 6 by Act-XXIV of 1997) has further provided that notwithstanding the provisions of sub-section (2), an appeal may be admitted after the period of 3(three) months specified in that sub-section, but not later than 6(six) months, if the appellant satisfies the Administrative Appellate Tribunal that he had sufficient cause for not preferring the appeal within 3(three) months. From a reading of sub-section (2) of section 6, it is clear that if an appeal is filed within 3(three) months from the date of making of the order or decision, it will not require any formal order of admission by the Administrative Appellate Tribunal and with the filing of the same, it has to be disposed of on merit. The procedure of disposal has been laid down in section-7 of the Act, but if an appeal is filed beyond three months and not later than 6(six) months as provided in sub-section (2A) of section 6 then a formal order of admission of the same is a must by the Appellate Tribunal upon its satisfaction that the appellant had sufficient cause for not preferring the appeal within 3(three) months. So, when an appeal can be filed by an aggrieved party within 3(three) months from the date of making the order or decision, it can really file an application for the certified copy of such order or decision (to be impugned in the appeal) within 3(three) months. And no exception can be taken if such an application is filed within the said statutory period of limitation may be at a belated stage, but as it appears the Administrative Appellate Tribunal took exception to the fact that, the application for the certified copy of the decision passed by the Administrative Tribunal in the instant case was filed after 24 days of the making the order by the Tribunal. When the Act provides for a limitation of 3(three) months for preferring an appeal, the Administrative Appellate Tribunal ought not to have taken exception in filing the application for the certified copy of the decision of the Administrative Tribunal after 24 days of the passing of the order. The appellant could file the application for certified copy of the impugned decision of

the Tribunal even one day before the expiry of the period of-3(three) months and he would not be out of time if he could file the appeal within the said period of l(one) day limitation after obtaining the certified copy (the period consumed in obtaining the certified copy is excluded if the application is tiled within the period of limitation). Therefore, the Administrative Appellate Tribunal was wrong in taking exception in filing the application for the certified copy of the decision of the Tribunal after 24 days in considering the sufficiency of the cause of delay in filing the appeal after the period of three months within the meaning of section *(2 A)* of section 6 of the Act. *However, we find nothing wrong with the finding of the Administrative Appellate Tribunal that the delay of 57 days in the office of the chief Conservator simply for coming to a decision as to whether any appeal was to be filed, was not a satisfactory explanation in preferring the appeal beyond three months. Thus, we come to the conclusion that the Administrative Appellate Tribunal did not commit any error of law in coming to the ultimate decision rejecting the Memorandum of Appeal on the ground of limitation.*

12. Since we have decided the first submission against the appellant, the second submission on which leave was granted need not be gone into and if we do so that would be absolutely academic, and more so, such an exercise would not endure any benefit to the appellant.

With the above observations, this appeal is dismissed. There will be no order as to costs.

Case cited:

* ***Abdul Kader Mondal and others Vs. Shamsur Rahman Chowdhury @ Shamsur Rahman Saha, 51 DLR (AD) 253.***

APPELLATE DIVISION (Civil)

Md. Muzammel Hossain–C.J.
Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.

CIVIL APPEAL NO. 205 OF 2007

(From the judgment and order dated 23rd February, 2005 passed by the High Court Division in Writ Petition No. 1633 of 2003)

Bangladesh and others ..... Appellants.

Vs.

M/S. Sanker Kumar Das .... Respondent.

For the Appellants : Mr. Abdus Salam Mondal, Deputy Attorney General instructed by Syed Mahbubar Rahman, Advocate-on-Record.

For Respondent : Mr. Munsurul Haque Chowdhury, Senior Advocate, instructed by Mr. Bivash Chandra Biswas, Advocate-on-Record.

Judgment: October 3, 2012

Constitution of Bangladesh – Article 103–

Resolution No. 2, 4, 9 adopted in A.D.P programme (2002/ 2003)–

It is established principle of law is that when it is proved that portion of project under taken by the respondent is completed in that case respondent is entitled to get the additional amount over excess work.

We also note that there is no denial that the portion of the project undertaken by the respondent was not completed. The appellants also do not claim that taka thirty lacs bill by the respondent is incorrect or false. The claim of the appellants is simply that the excess work done and the additional amount claimed was over and above the amount allotted for this portion of the project. We also note that the Executive Engineer, Roads and Highways, Road Division, Gopalgonj (writ respondent No.6) by his letter under Memo No.C-113/2989 dated 23.11.2002 requested the Superintendent Engineer, Faridpur to take necessary steps for allotting the remaining Tk.20,00,000/- (Taka twenty lacs) for the respondent's work. (Para 9)

In the facts and circumstances noted above, we accept the view taken by the High Court Division that the contractor having duly completed his sub-project No. 26 within the stipulated time and to full satisfaction is entitled to the full amount against the said project. ..... (Para 10)

JUDGMENT

MUHAMMAD IMMAN ALI–J: The Civil Appeal, by leave, is directed against the judgment and order dated 23.02.2005 passed by a Division Bench of the High Court Division in Writ Petition No.1633 of 2003 making the Rule absolute.

The facts of the case, in brief, are that the respondent M/S Sanker Kumar Das filed the Writ Petition No.1633 of 2003 challenging the resolution No.2.4.9 adopted in A.D.P. Program (2002/2003) meeting held on 30.09.2002, so far it affects the sub-project No.26 of the respondent, purportedly staying the works of all sub projects of the Project of South-West Zone, 36 Feeder Sharak Nirman, except Sub project Nos.1-8 by letter thereof dated 27.01.2003 issued by the petitioner No.1. The respondent obtained a work order contained in Memo No.W-4/1429 dated 12.06.2002 from the Executive Engineer (R & H), Roads Division, Gopalgonj for constructing flexible pavement over Hatbaria-Golabaria Road, 9th Angsha and 10th Angsha. As per the said work

order the respondent was to complete the work within 30 days from the date of the said work order. The Roads and High Ways Division, Dhaka allocated a total amount of taka 6 crores for the total 36 sub-projects and the project of the respondent was allocated taka 10 lacs. However, the respondent claimed taka 30 lacs asserting that he had to do excess works in completing the project. The petitioner No.1 by its letter dated 06.11.2002 communicated the aforesaid resolution adopted in A.D.P. 2002-2003 meeting held on 30.09.2002 staying all the sub-projects except sub-project Nos.1-8 and also staying the payment of money.

2. Being aggrieved, the writ petitioner (respondent herein) filed the Writ Petition No.1633 of 2003 before the High Court Division and obtained Rule.

3. The writ respondent Nos. 3 and 6 contested the Rule by filing an affidavit-in-opposition denying the material allegations made in the writ petition stating that the work order dated 18.06.2002 was not issued and the construction work was not carried out under the Annual Development Programme of the financial year 2002-2003. It is further stated that the work on the project would be taken up for implementation after getting the approval from the Chief Engineer which for all practical purposes means future work and there is no scope of inclusion of the work carried out on the basis of work order dated 12.06.2002 in Annual Development Programme of the financial year 2002-2003, as such, the writ petitioner's contention in respect of project No.26 for Tk.10,00,000/- is not correct and denied. It is also stated in the affidavit-in-opposition that the writ petitioner cannot claim any interest over the fund allotted for the financial year 2002-2003 since by the Memo No. 8.6.2002 the writ respondent No. 3 distributed the fund allotted for the financial year 2001-2002 (Annexure-X), that the resolution has no nexus with the work carried out on the basis of Annexure-"A". Hence, the Rule is liable to be discharged.

4. By the impugned judgment and order, the High Court Division made the Rule absolute.

Leave was granted to consider the following:

"I. Whether the High Court Division erred in law in granting relief not prayed for.

II. Whether the High Court Division erred in law in directing the petitioners to disburse the entire bill amount without considering the necessity of calculating the amount as it was not a liquidated or ascertained amount, more so when the claim for payment of the bill amount was made in the absence of allocation of any amount made in favour of the respondent in accordance with the usual process of the Government".

5. Mr. Abdus Salam Mondal, the learned Deputy Attorney General appearing on behalf of the appellants submits that the High Court Division has given more relief than was claimed and prayed for by the respondent. He further submits that the respondent's portion of the Project was allotted a sum of Tk. 10,00,000/- (Taka ten lacs) and he could not therefore claim any excess amount since he did not obtain any authorization for any excess work. He finally submits that the High Court Division erred in directing disbursement of the respondent's entire bill of Tk. 30,00,000/- (Taka thirty lacs) without considering the fact, that there was no allocation of fund for any excess amount over and above taka ten lacs which was authorized for the respondent's Project No.26.

6. Mr. Munsurul Haque Chowdhury, the learned Senior Counsel appearing on behalf of the respondent submits that in his writ petition the respondent clearly prayed for payment of bill amount of Tk.30,00,000/-(Taka thirty lacs) against the completed work of Project No.26 of South West Zone 36 Feeder Sharak Nirman (A.D.P.) serial No. 31 and in his prayer he claimed the said amount in no uncertain terms. He further submits that the respondent as writ petitioner challenged the resolution No.2.4.9 adopted in the Annual Development Programme (2002-2003) meeting held on 30.09.2002 so far as it affected his sub-Project No.26. He next submits that the said project of the respondent was completed to the satisfaction of the concerned authority and to that extent Resolution No.2.4.9 in the meeting held on 30.09.2002 is illegal so far as it relates to sub Project No. 26. He finally submits that the High Court Division was correct in directing the writ respondent Nos. 1, 3, 6 and 7 to make disbursement of the respondent's bill since the payment of the bill was recommended and endorsed by the Executive Engineer, Roads and Highways, Road Division, Gopalgonj in his Memo dated 23.11.2002.

7. We have considered the submissions of the learned Counsel appearing for the parties concerned and perused the impugned judgment of the High Court Division and other connected papers on record.

8. In the impugned judgment, the High Court Division has noticed the letter of the Executive Engineer, Roads and Highways, Road Division, Gopalgonj dated 23.11.2002 and observed that the work order issued in favour of the writ petitioner (respondent herein) was dated 12.06.2002 and he completed the sub-Project within the stipulated period of 30 (thirty) days but due to paucity of fund his bill could not be paid. Apparently the work order and the sub-project had already been completed before the resolution was taken by the concerned Minister staying the implementation

of the concerned project under the A.D.P. cluster Project No.31.

9. *We also note that there is no denial that the portion of the project undertaken by the respondent was not completed. The appellants also do not claim that taka thirty lacs bill by the respondent is incorrect or false. The claim of the appellants is simply that the excess work done and the additional amount claimed was over and above the amount allotted for this portion of the project. We also note that the Executive Engineer, Roads and Highways, Road Division, Gopalgonj (writ respondent No.6) by his letter under Memo No.C-113/2989 dated 23.11.2002 requested the Superintendent Engineer, Faridpur to take necessary steps for allotting the remaining Tk.20,00,000/- (Taka twenty lacs) for the respondent's work.*

10. *In the facts and circumstances noted above, we accept the view taken by the High Court Division that the contractor having duly completed his sub-project No. 26 within the stipulated time and to full satisfaction is entitled to the full amount against the said project.*

We do not find any illegality or infirmity in the impugned judgment of the High Court Division. Accordingly, the appeal is dismissed without however any order as to costs.

APPELLATE DIVISION
(Civil)

Nazmun Ara Sultana–J.
Mohammad Anwarul Haque–J.
Hasan Foez Siddique–J.

CIVIL PETITION FOR LEAVE TO APPEAL NOS. 1364 and 1920 OF 2010.

(From the judgment and order dated 05.04.2010 and 18.05.2010 passed by the Administrative Appellate Tribunal in Appeal Nos.248 and 243 of 2007.)

Janata Bank Ltd. and other .....
..... Petitioners (in both the cases).

Vs.

Md. Moraduzzaman .....
Respondents (In C.P.No.1364 of 2010).
Md. Abdus Salam ..... Respondents (In C.P.No.1920 of 2010).

For the Petitioner (in both the cases) : Mr. M. Khaled Ahmed, Advocate-on-Record.

For the respondent (In C.P.No.1364 of 2010) : Mr. Khurshed Alam Khan, Advocate, instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.

For the respondent (In C.P.No.1920 of 2010) : Mr. Khurshed Alam Khan, Advocate, instructed by Mrs. Sufia Khatun, Advocate-on-Record.

Judgment: September 23, 2013

Janata Bank (Employees) Service Regulation, 1995–

Regulation 39 and 49– On the allegation of corruption/misconduct when any departmental proceeding and criminal cases are started in that case till the disposal of criminal cases department proceeding will be stayed.

We have heard the learned Advocate for the petitioners of both the petitions, perused, the petitions, judgments and orders and other materials on record. It appears that the initiating departmental proceedings against the respondents for the allegation of corruption, misconduct etc. both of them were dismissed from their services. The departmental appeals preferred by them had also been dismissed. The Administrative Tribunal in the aforesaid two cases set aside the orders of dismissal of both the respondents and ordered that the departmental proceeding brought against the respondents would remain pending and be stayed till the disposal of the criminal cases which are still pending against the respondents ..... (Para 5)

JUDGMENT

HASAN FOEZ SIDDIQUE–J: These two petitions for leave to appeal No.1364 and 1920 of 2010 are heard together and they are disposed of by this common judgment.

Md. Moraduzzaman, the respondent of Civil Petition for leave to appeal No.1364 of 2010 was Cashier-cum-Supervisor of Janata Bank Gonaritali Branch, Jamalpur. He was dismissed from his service under the Provision of Regulation 39 of Janata Bank (Employees) Service Regulation, 1995 (herein after referred has service regulation) by a letter communicated under memo No. শৃঃ/এইউএম/সিএএস-৩৩৩৭/৫৩/০৩ dated 13.01.2003 issued under the signature of Assistant General Manager, Janata Bank. Against the order of dismissal, the respondent preferred appeal and the said appeal was also dismissed on 06.10.2004. Challenging the order of dismissal, the respondent preferred Administrative Tribunal Case No.218 of 2003 before the Administrative Tribunal No.1, Dhaka. The petitioner Janata Bank appeared in the said case and contested the same by filing written objection. The Tribunal allowed the said case and set aside the order of dismissal of the respondent from the service dated 13.01.2003. But the Tribunal restored the departmental proceeding to its file and number and stayed the same till disposal of the criminal case pending against the petitioner on the self-same allegation. It was further ordered that the order of suspension of the respondent would remain enforce till disposal of the departmental proceeding and the result of the criminal case pending against him. The bank preferred Administrative Appeal No. 248 of 2007 before the Administrative Appellate Tribunal and the Administrative Tribunal by its judg-

ment and order dated 05.04.2010 dismissed the said appeal. Against the said aforesaid judgment and order Janata Bank has filed instant petition.

2. In Civil Petition for leave to appeal No.1920 of 2010, the respondent Abdus Salam Khan was Field Assistant cum-Supervisor of Janata Bank Balizuri Bazar Branch, Jamalpur. He was dismissed under the provision of regulation 39 of Service Regulation communicated under memo No. শৃঃ/ডিএইচ/কেসি-৫৮১/৭৩/০৩/১২৭ dated 18.01.2003. Against the order of dismissal he preferred appeal which was dismissed on 12.05.2004. Then the respondent filed Administrative Tribunal Case No.221 of 2003 before the Administrative Tribunal No.l, Dhaka for getting the said order of dismissal set aside. The petitioner Janata Bank appeared in the said case and contested the same by filing written objection. The Administrative Tribunal by its judgment and order dated 21.08.2007 allowed the said case and set aside the order of dismissal of the respondent from his service dated 18.01.2003. The Tribunal further ordered that the departmental proceeding brought against the respondent shall be stayed till disposal of the criminal case pending against him for the self-same allegation. The Tribunal also ordered that the order of suspension of the respondent will remain in force till the disposal of the departmental proceeding and the criminal case pending against the respondent. Against the said order, the bank preferred Administrative Appeal No.234 of 2007 before the Administrative Appellate Tribunal who by his judgment and order dated 15.05.2010 dismissed the said appeal. Then the bank filed the instant petition.

3. Mr. M. Khaled Ahmed, learned Advocate for the petitioner submits that the bank rightly passed the impugned orders of dismissal of the respondents of both the petition since criminal cases have been initiated against both the respondents. Mr. Khaled admitted that the criminal cases filed against the respondents are still pending.

4. No one appeared for the respondents of the petitions.

5. *We have heard the learned Advocate for the petitioners of both the petitions, perused, the petitions, judgments and orders and other materials on record. It appears that the initiating departmental proceedings against the respondents for the allegation of corruption, misconduct etc. both of them were dismissed from their services. The departmental appeals preferred by them had also been dismissed. The Administrative Tribunal in the aforesaid two cases set aside the orders of dismissal of both the respondents and ordered that the departmental proceeding brought against the respondents would remain pending and be stayed till the disposal of the criminal cases which are still pending against the respondents.* However it was ordered that the orders of suspension of the respondents will remain in force. It was further observed that the fates of the departmental proceedings would be decided in the light of the result of the criminal cases pending against the respondents. Regulation No.49 of the

Janata Bank (employees) Service Regulation provides:

"৪৯। আদালতে বিচারাধীন কার্যধারা।– (১) কোন কর্মচারীর বিরুদ্ধে কোন আদালতে একই বিষয়ের উপর কোন ফৌজদারী মামলা বা আইনগত কার্যধারা বিচারাধীন থাকিলে, তাহার বিরুদ্ধে বিভাগীয় কার্যধারা সমাপনের ব্যাপারে কোন বাধা থাকিবে না, কিন্তু যদি কর্তৃপক্ষ বিভাগীয় কার্যধারায় উক্ত কর্মচারীর উপর কোন দন্ডারোপ করার সিদ্ধান্ত গ্রহণ করে। তাহা হইলে উক্ত মামলা বা আইনগতঃ কার্যধারা নিষ্পত্তি বা সম্পন্ন না হওয়া পর্যন্ত এই দন্ডারোপ স্থগিত থাকিবে।"

In view of the aforesaid provision of law, we do not find any wrong in the decisions given by the Administrative Tribunal and the Administrative Appellate Tribunal.

Accordingly, both the petitions are dismissed.

APPELLATE DIVISION (Civil)

Md. Muzammel Hossain–C.J.
Md. Abdul Wahhab Miah–J.
A.H.M. Shamsuddin Choudhury–J.

CIVIL PETITION FOR LEAVE TO APPEAL NO.1736 OF 2013.

(From the judgment and order dated 14.2.2010 passed by the High Court Division in Writ Petition No. 2932 of 2009)

Bangladesh, represented by Secretary, Ministry of Finance, Implementation Division, Bangladesh Secretariat, Ramna, Dhaka and others .... Petitioners.

Vs.

Md. Abdul Halim ..... Respondent.

For the Petitioners : Mr. Ekramul Haque, Deputy Attorney General, instructed by Mrs. Sufia Khatun, Advocate-on-Record.

For the Respondent : Mr. Md. Zainul Abedin, Advocate-on-Record.

Judgment: February, 16, 2014

Constitution of Bangladesh–

Article 29– It is law that there shall be equality of opportunity for all citizens in respect of employment on office in the service of the Republic. No discrimination can be played and any discrimination which is constitutionally for-bidden and as such writ can lie without going to the Administrative Tribunal.

The High Court Division however, rejecting the objection on maintainability, made the Rule absolute, holding that since allegation of discrimination has been raised and Fundamental Rights guaranteed by the Constitution has been engaged writ remedy is available. ..... (Para 8)

We have scanned the High Court Division's Judgment from the top to the toe. Having done so, we find that most of the grounds relied on were misconceived. In the first

place, the High Court Division did not at all invoke the doctrine of legitimate expectation on the substantive point, but found that the Writ Petitioner has been subjected to discrimination which is constitutionally forbidden, while on maintainability the learned Judges of the High Court Division relying on the principle laid down by this Division in the case reported in 12 BLC (AD) 142, held that the impugned decision was judicially reviewable under Article 102 of the Constitution as the same has been challenged on the ground of discrimination, invoking Fundamental Rights as secured by the Constitution. ..... (Para 10)

JUDGMENT

A.H.M. SHAMSUDDIN CHOUDHURYY-J: The civil petition for leave to appeal under consideration has been preferred by Bangladesh (the writ respondent No. 1) seeking our leave to appeal against the judgment and order the High Court Division passed in Writ Petition No. 2932 of 2009 on 14th February, 2010.

2. The sole respondent before us, who filed the subject Writ Petition before the High Court Division (henceforth cited as the writ petitioner), who is presently employed as an Office Assistant in the Supreme Court of Bangladesh, figured detailed averments in his pleading, salient aspects of which are reproduced below in conspectus.

The Writ Petitioner having graduated himself in Arts, in 1987 from the University of Dhaka, got appointed as a Lower Division Assistant (LDA) in the High Court Division on 9th April, 1989. His. job was confirmed on 14th January, 2002.

Vide a proggapan dated 13th September 1995, the Ministry of establishment communicated the government decision to convert the post of Lower Division Assistant to Office Assistant. The same was published in Bangladesh Gazette dated 23rd February, 2005.

3. Previously, vide a G.O. dated 6th January 1981, it was intimated that 33?% of the total sanctioned Lower Division Assistants would be allowed to have Selection Grade. Sanctioned posts of present Office Assistants at the High Court Division are 220, 33?% of which is counted at 73?, i.e. more them 73 Office Assistants of the High Court Division are entitled to get Selection Grade.

4. Vide a memo dated 23rd November 1983, government decision to grant Selection Grade to 3rd class employees, inclusive of the then Lower Division Assistants (now Office Assistants) when they complete 5 years of service in the post, was made known.

All Office Assistants including those employed at the Ministry of Law

Justice and Parliamentary Affairs Kept enjoying Selection Grade, though the same has not been made available to the Office Assistants employed at the High Court Division, notwithstanding that such discrimination is prescribed by Article 29 of the Constitution.

5. Upper Division and Lower Division Assistants of the High Court Division applied to the Ministry of Law and Justice for their inclusion in the Selection Grade on 25th October 1989, but their prayer was turned down on 16th November 1987. Similar application of the Writ Petitioner and other Office Assistants of the Supreme Court was again met with rejection of the Ministry of Law Justice and Parliamentary Affairs on 5th April 2009, which fact was intimated to the Registrar of the Supreme Court (Writ respondent No.5) by an Assistant Secretary at the said Ministry (Writ respondent No.4).

6. The said Ministry allowed Selection Grade on 21.11.2007 to some Accountants of the Supreme Court (3rd Class) in compliance with the High Court Division's order that was made when the said Division made absolute the Rule that was issued on their Writ Petition on 11th November 2003.

Selection Grade scale has also been granted to all the Typist -Cum- LD Assistants vide an Office order dated 18th August 2004, after the High Court Division issued an order to that effect when a Rule generated from the Writ Petition filed by a Typist-Cum-LD Assistant was made absolute.

7. By a supplementary affidavit, the Writ Petitioner stated that his application to the Hon'ble Chief Justice dated 23rd may 2007 for Selection Grade was forwarded by a Deputy Registrar of the Supreme Court to the Secretary, Ministry of Law Justice and Parliamentary Affairs on 18th July 2007, which then circled round the Ministries of Finance and Establishment, but with no result.

None of the Respondents filed any affidavit in opposition.

However, during the hearing of the Rule before the High Court Division a Deputy Attorney General representing the writ respondent No. 1 opposed the Rule on the Ground that Administrative Tribunal, not the Writ Court, was the appropriate forum.

8. *The High Court Division however, rejecting the objection on maintainability, made the Rule absolute, holding that since allegation of discrimination has been raised and Fundamental Rights guaranteed by the Constitution has been engaged writ remedy is available.*

9. In the Leave to Appeal application, the writ respondent No. 1 contended, *inter alia* that the writ petitioner has no legitimate expectation, his claim is inconsistent with the service Act 1975, mere service experience is not the cri-

teria for the Lower Division Assistants to be promoted to the post of Office Assistants, Grade of the Lower Division, Assistants of the Ministries is different from that of the Office Assistant of the Supreme Court.

10. *We have scanned the High Court Division's Judgment from the top to the toe. Having done so, we find that most of the grounds relied on were misconceived. In the first place, the High Court Division did not at all invoke the doctrine of legitimate expectation on the substantive point, but found that the Writ Petitioner has been subjected to discrimination which is constitutionally forbidden, while on maintainability the learned Judges of the High Court Division relying on the principle laid down by this Division in the case reported in 12 BLC (AD) 142, held that the impugned decision was judicially reviewable under Article 102 of the Constitution as the same has been challenged on the ground of discrimination, invoking Fundamental Rights as secured by the Constitution.*

11. The Writ Petitioner filed an application seeking acceptance of an additional paper book, containing some Important documents, which reveal that, as the order passed by the High Court Division dated 31st in the subject Writ Petition remained unimplemented, the Writ Petitioner successfully filed a petition before the High Court Division, seeking drowance of contempt of Court proceeding against Mr. Shahidul Karim, the Secretary, Ministry of Law Justice and Parliamentary Affairs and the said Division issued a Rule upon the named Secretary on 23rd January, 2011, requiring him to show cause as to why contempt petition should not be drawn against him.

12. Subsequent to that on 13th February 2011, a Senior Assistant Secretary at the Ministry of Finance, with reference to the contempt petition filed by the Writ Petitioner, addressed a correspondence to the Secretary Ministry of Law Justice and Parliamentary Affairs, stating therein that pursuant to the Judgment in the subject Writ Petition, the Ministry of Finance accords its consent in granting Selection Grade to the Writ Petitioner. On 15tn February 2011 a Senior Assistant Secretary at the Ministry of Law Justice and Parliamentary Affairs wrote to the Registrar, Bangladesh Supreme Court, stating that since promotion, time scale, selection grade of non-gazetted officers, employees of the High Court Division are regulated by the High Court Division, the same of the Writ Petitioner is also finally resolvable by the High Court Division. It was further stated that in the light of the consent accorded by the Ministry of Finance, consent is granted to put the Writ Petitioner in the Selection Grade Scale.

13. A Deputy Registrar then on 16th March 2011 addressed a letter to the Learned Attorney General for Bangladesh, seeking the latter's opin-

ion on the availability of Selection Grade Scale by such Office Assistants who had worked in the capacity for five years In the light of the Judgment passed in the subject Writ Petition.

14. In response the Learned Attorney General by his correspondence dated 12th March 2012, intimated in unequivocal terms that following the Judgment of the High Court Division, the Ministry of Finance accorded consent, in granting Selection Grade to the Writ Petitioner and that since the issue of granting Selection Grade to the non-Gazetted Officers/staff of the High Court Division is determined by the High Court Division, the question of awarding Selection Grade to the Writ Petitioner has been left to be finally decided by the High Court Division. He concluded stating that in the light of the subject Judgment in the Writ Petition, the Writ Petitioner and other staffs of the same category are to be awarded Selection Grade.

15. Then on 15th April 2012, Deputy Registrar-1 of the Supreme Court wrote to the Secretary, Ministry of Law Justice and Parliamentary Affairs that in the light of the Learned Attorney General's opinion that all Office Assistants who have worked for longer than five years are to be elevated to Selection Grade, the Finance Ministry's memo dated 13th February 2011, containing the Ministry's consent, needs amendment, which should be done on an urgent basis.

16. By a letter dated 8th May 2012, addressed, to the Secretary, Ministry of Law Justice and Parliamentary Affairs, a Deputy Secretary at the Ministry of Finance, asked for a certified copy of the Attorney General's opinion, number of Office Assistants who worked for more than five years, and financial analyses. In turn a Senior Assistant Secretary at the Ministry of Law, Justice and Parliamentary Affairs wrote a letter to the Registrar, Supreme Court on 17th May 2012.

17. On 10th June 2012, Deputy Registrar-1 of the Supreme Court again wrote to the Secretary, Ministry of Law, Justice and Parliamentary Affairs for amended consent in the light of the Learned Attorney General's opinion.

18. On 17th September, 14th November 2012 and 20th May, 2013, the said Deputy Registrar directed three correspondences to the Secretary, Ministry of Law, Justice and Parliamentary Affairs, asking for the amended consent of the Ministry of Finance.

19. All the documents in the additional paper book depict that the Ministry of Finance had already given consent for the Writ Petitioner's inclusion in the Selection Grade while the Ministry of Law Justice and Parliamentary Affairs confirmed that question of inclusion in the Selection Grade of non-gazetted officers/ employ-

ees of the High Court Division is to be determined by the High Court Division.

20. When the learned Attorney General's opinion was sought, he expressed that not only the Writ Petitioner but all such Office Assistants who have worked in that capacity for longer than five years would also to be raised to Selection Grade, on receipt of which Deputy Registrar-1 of the Supreme Court asked for an amended version of the Finance Ministry's consent.

21. It is in the back drop of that scenario the subject Civil Petition for Leave to Appeal was filed.

It is a bit odd that the said petition, impugning the High Court Division's subject Judgment, was preferred after the above narrated consent was given in apparent compliance with the said Judgment and after the Learned Attorney General expressed his opinion, in favour of the writ petitioners.

In the light of the said scenario, question of granting leave does not arise at all.

22. We are, hence, inclined to dispose of the application with the observation and direction that the amended consent asked for must be made available without delay so that the Learned Attorney General's opinion can be implemented soon.

Case cited:

* ***12 BLC (AD) 142.***

APPELLATE DIVISION (Criminal)

Md. Muzammel Hossain–C.J.
Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.

CRIMINAL PETITION FOR LEAVE TO APPEAL NO. 552 of 2010

(From the judgment and order dated 01.08.2010 passed by the High Court Division in Criminal Appeal No.3761 of 2005.)

The State ..... Petitioner.

Vs.

Abdul Kader Sarder and others .....
..... Respondents.

For the Petitioner : Mr. Momtazuddin Fakir, Additional Attorney General instructed by Mrs. Sufia Khatun, Advocate-on-Record.

For Respondent No.2 : Mr. Khondker Mahbub Hossain, Senior Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.

Respondent No.1 : Not represented.

Judgment: January 7, 2013

Penal Code, 1860–

Section 302/34– When it is disclosed that before lodging the

F.I.R the informant met the alleged eye witness saw the accused persons commit the murder but at the time of filing F.I.R informant did not state and did not name any of the accused persons in the F.I.R in that case that alleged eye witnesses evidence is not trustworthy at all.

It appears that the High Court Division has examined and considered the evidence of P.Ws. including the P.W.3 meticulously and pointed out that none of the P.Ws.- who claimed to have witnessed the occurrence- was trustworthy at all for the reasons that in the F.I.R. none of these witnesses was named as eye witnesses or none of the accused persons, was named. The High Court Division, by making elaborate discussion in the impugned judgment, has pointed out that both the F.I.R. and the evidence of the informant (P.W.I) disclosed that before lodging the F.I.R. the informant met all these alleged eye witnesses but inspite of that the informant did not state in the F.I.R. that these witnesses saw the accused persons commit the murder and also did not name any of the accused persons in the F.I.R. and that this fact very reasonably made the P.W.3 and other alleged eye witnesses not trustworthy at all. On going through the evidence and other facts and circumstances on record we do not find anything to disagree with this finding and decision of the High Court Division. In our opinion the High Court Division reasonably and rightly disbelieved the P.W.3 and the other alleged eyewitnesses and, therefore, rightly held that the prosecution hopelessly failed to prove that the convict-appellants and other accused persons committed the murder. ..... (Para 8)

JUDGMENT

NAZMUN ARA SULTANA–J: The State has filed this Criminal Petition for leave to appeal against the judgment of acquittal passed by the High Court Division in Criminal Appeal No.3761 of 2005.

2. The respondents preferred the above appeal against the judgment and order dated 27.07.2005 passed by the Druta Bichar Tribunal, Barisal in Druta Bichar Tribunal Case No.03 of 2005 arising out of G.R. No.94 of 2003 corresponding to Bhandaria P.S. Case No.4 dated 08.04.2003 convicting the respondents under sections 302/34 of the Penal Code and sentencing them to suffer imprisonment for life and to pay a fine of Tk.10,000/- each in default to suffer rigorous imprisonment for 1(one) year more.

3. The prosecution case, in short, was that the informant Md. Moniruzzaman lodged the F.I.R. with Bhandaria Police Station on 08.04.2003 at 6.30 A.M. alleging,

inter-alia, that in the night following 08.04.2003 at about 1.00 A.M. some miscreants entered into the dwelling hut of his sister's husband named Mizanur Rahman @ Babul Sarder by cutting a "shind" and murdered Babul Sarder and his wife Jesmin Begum by gunshot. That the informant– who was a close neighbour of Babul Sarder woke up from sleep hearing the sound of gunshot and he along with others then went to the house of deceased Babul Sarder and saw the dead bodies of Babul Sarder and his wife. At that time they also saw Hobirunnessa, the mother of deceased Babul Sarder crying. On the basis of the said F.I.R the case was started and police took up investigation of the case. But subsequently the CID took up investigation of the case from police and after completion of investigation submitted charge sheet against the accused-appellants and four others. The case was ultimately transferred to the Druta Bichar Tribunal, Barisal which held trial of the case after framing formal charges under sections 302/34/457 of the Penal Code against all the accused persons. The prosecution examined 23 witnesses in support of its case and the tribunal on consideration of these evidence convicted the present three accused-respondents under sections 302/34 of the Penal Code and sentenced them as foresaid. The other co-accused persons were found not guilty and were acquitted of the charges.

4. In appeal preferred by the convicted accused the High Court Division, on hearing both the sides and considering the evidence on record, found all the three accused-appellants not guilty on the finding and observations that there was no reliable and acceptable evidence to prove the charges against the accused-appellants and that the prosecution hopelessly/utterly failed to prove that the convict-appellants committed the murder.

5. Mr. Momtazuddin Fakir, the learned Additional Attorney General for the State petitioner has made submissions to the effect that in this case there are several eye witnesses of the murder and that these eye witnesses including P.W.3- the mother of the deceased Babul Sarder has deposed before the court stating that they saw these accused-appellants to murder Babul Sarder and his wife by gunshot and then to flee away. The learned Additional Attorney General has argued that the trial court, on proper consideration of these evidence and other facts and circumstances rightly convicted the accused-appellants of the charge of murder, but the High Court Division has failed to apprehend and appreciate these evidence of the eye witnesses and consequently came to a wrong finding and decision which has caused miscarriages of justice; that the High Court Division has committed wrong in holding that the P.W. 3 and the other eye witnesses

were not trustworthy without assigning any cogent reason.

6. Mr. Khandker Mahbub Hossain, the learned Senior Advocate for the respondents has made submissions supporting the impugned judgment of the High Court Division.

7. We have considered the submissions of the learned Advocates of both the sides and gone through the impugned judgment of the High Court Division and also the judgment of the trial court and the evidence on record.

8. *It appears that the High Court Division has examined and considered the evidence of P.Ws. including the P.W.3 meticulously and pointed out that none of the P.Ws.- who claimed to have witnessed the occurrence- was trustworthy at all for the reasons that in the F.I.R. none of these witnesses was named as eye witnesses or none of the accused persons, was named. The High Court Division, by making elaborate discussion in the impugned judgment, has pointed out that both the F.I.R. and the evidence of the informant (P.W.I) disclosed that before lodging the F.I.R. the informant met all these alleged eye witnesses but inspite of that the informant did not state in the F.I.R. that these witnesses saw the accused persons commit the murder and also did not name any of the accused persons in the F.I.R. and that this fact very reasonably made the P.W.3 and other alleged eye witnesses not trustworthy at all. On going through the evidence and other facts and circumstances on record we do not find anything to disagree with this finding and decision of the High Court Division. In our opinion the High Court Division reasonably and rightly disbelieved the P.W.3 and the other alleged eyewitnesses and, therefore, rightly held that the prosecution hopelessly failed to prove that the convict-appellants and other accused persons committed the murder.*

Evidently there is no merit in this leave petition and hence it is dismissed.

APPELLATE DIVISION (Criminal)

Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.
Mohammad Anwarul Haque–J.

CRIMINAL PETITION FOR LEAVE TO APPEAL NO. 579 OF 2010

(From the judgment and order dated 12th of October , 2010 passed by the High Court Division in Criminal Miscellaneous Case No. 23291 of 2009)

Md. Amirul Islam ..... Petitioner.

Vs.

The State and others ..... Respondents.

For the Petitioner : Mr. S.N. Goswami, Advocate, instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

The Respondents : Not represented.

Judgment: February 13, 2014

Penal Code, 1860–

Section 420/406– When it is proved that any specific allegation against the accused petitioner who induced the informant to pay 70,000/- to get a job in the college in a fraudulent manner and did not return the money therefore evidently ingredient of cheating and criminal breach of trust exist calling for initiation of criminal case.

The High Court Division observed that there is a specific allegation against the accused petitioner, who induced the informant to pay Tk. 70,000/- to get a job in the College in a fraudulent manner and did not return the money and, therefore, evidently ingredient of cheating and criminal breach of trust exist calling for initiation of a criminal proceeding. It was further observed that the Investigating Officer also found truth in the allegation and accordingly submitted charge sheet in the case to proceed against the accused petitioner. ..... (Para 10)

JUDGMENT

MUHAMMAD IMMAN ALI–J: This criminal petition for leave to appeal is directed against the judgment and order dated 12.10.2010 passed by a Division Bench of the High Court Division in Criminal Miscellaneous Case No. 23291 of 2009 discharging the Rule.

2. The relevant facts, for disposal of the case, are that respondent No. 2, Enamul Haque lodged First Information Report with Dhamoirhat Police Station, Naogaon against the petitioner alleging *inter alia* that the petitioner as Member of the Managing Committee of Dhamoirhat M.M. Degree College approached the informant (respondent No. 2 herein) saying that if he could pay Tk. 70,000/- for the development of the college, he would be appointed as Assistant Accountant of the college. In view of such assurance, the informant paid Tk. 70,000/- to the petitioner for the said purpose. Accordingly, the petitioner managed an appointment letter for the said post on 23.9.2001. But subsequently, it transpired that there was no such post in the college and as such, no salary could ever be paid to respondent No. 2 against the fake appointment letter. Subsequently respondent No. 2 demanded return of the money. Then the petitioner gave a hand note dated 10.5.2007 with undertaking that he would return the money, but ultimately he did not do so. As such the F.I.R. was lodged against the petitioner.

3. After investigation, the police submitted charge sheet against he petitioner under sections 420/406 of the Penal Code on 30.8.2007.

money was taken in the name of development works and for giving the informant a job. Purportedly the informant was appointed as an Assistant Accountant, but in reality no such post existed and the informant did not receive salary for a long time and upon inquiry found out that the post, for which he had been appointed, did not exist. Moreover, it appears that the accused, when confronted by the informant agreed to return the sum of Tk. 70.000/- and on 10.05.2007 at 12:45 p.m. at Dhamoirhat Bazar, gave an undertaking by way of a hand note in presence of one Abdul Mukit.

10. *The High Court Division observed that there is a specific allegation against the accused petitioner, who induced the informant to pay Tk. 70,000/- to get a job in the College in a fraudulent manner and did not return the money and, therefore, evidently ingredient of cheating and criminal breach of trust exist calling for initiation of a criminal proceeding. It was further observed that the Investigating Officer also found truth in the allegation and accordingly submitted charge sheet in the case to proceed against the accused petitioner.*

11. In view of the above facts and circumstances, we do not find any illegality, irregularity and infirmity in the impugned judgment and order of the High Court Division.

Accordingly, the criminal petition for leave to appeal is dismissed.

APPELLATE DIVISION
(Criminal)

Md. Muzammel Hossain–C.J.
Md. Abdul Wahhab Miah–J.
Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.
Md. Shamsul Huda–J.

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.548 OF 2010

(From the judgment and order dated 6th June, 2010 passed by the High Court Division in Criminal Appeal No.5016 of 2006 with Jail Appeal No.18 of 2007)

Shakil alias Saikka alias Shahin alias Comando and another ..... Petitioners.

Vs.

The State ..... Respondent.

For the Petitioner : Mr. Mohammad Ali Akanda, Advocate, instructed by Syed Mahbubar Rahman, Advocate-on-Record.

For Respondents : Mr. Md. Shohrowardi, Deputy Attorney General, instructed by Mrs. Sufia Khatun, Advocate-on-Record.

Judgment: July 8, 2012

Penal Code 1860–

Section 302/109/34– There is no rule of law to disbelieve evidence

of such a witnesses only because they have been declared hostile. Evidence of such a witnesses may be true. It is settled principle of law is that whole of the evidence of such witnesses so far it affects both parties favourably or unfavourably should be considered. In case of hostile witness it is desirable that the court after observing the demeanour of such witness, shall make the assessment of their evidences. If corroboration from other evidence is available and their evidences fit in with the attending circumstances, the evidence may be accepted and considered along with the other evidence.

It appears that the High Court Division upheld the conviction of the petitioners upon finding that although the P.Ws.2-4 were declared hostile by the prosecution, during their cross-examination by the prosecution they deposed admitting the prosecution case and as such no illegality was found in conviction of the petitioners. ..... (Para 12)

We have also considered the deposition of the witnesses. The prosecution case is that the victim was chased by the accused into the house standing on Holding No. 103 and was killed there. In her cross-examination by the prosecution, upon being declared hostile, P.W.2 Fatema Begum stated, "খোকনকে আমাদের বাসার ১০৩নং পূর্ব রাজা বাজারস্থ বাসার নিচ তলায় আমার বাসার করিডোরে আমার রুমের সামনে হত্যা হয়"। Later on in her cross-examination P.W.2 Fatema Begum stated that "আসামীরা বা খোকন কতক্ষণ আমাদের বাসায় ছিল বলতে পারি না"। P.W.3 Zebunessa stated in her examination-in-chief that the occurrence took place in their house situated on Holding No. 103 East Raja Bazar. She was declared hostile by the prosecution. In her cross-examination by the prosecution she stated "খোকন এর মৃত দেহ আমার ভাসুরের রুমের সামনে করিডোরে পড়ে ছিল"। She further stated, "এলাকার আসামী সাকিল, বাবুল, বাবু, আবুল, হারুন, মান্নান সশস্ত্র অবস্থায় ২৯.৩.৯৬ইং তারিখ দুপুর অনুমান ১১.৩০/২.০০ টার দিকে খোকনকে ধাওয়া করে আমাদের বাসার খোলা দরজা দিয়ে ঢুকে"। P.W. 4 Morium, sister of the victim, who was also declared hostile by the prosecution, stated in her cross-examination by the prosecution that accused Babul called her brother (the victim) from their house. Although she denied having seen the accused chasing her brother into the house of Zebunessa on Holding No. 103, she stated that the police recovered her brother's dead body from the house of Zebunessa on Holding No. 103. ..... (Para 13)

The above excerpts of the deposition of the prosecution witnesses clearly supports the prosecution case that the victim was chased by

the armed accused into the house standing on Holding No. 103 East Raja Bazar and was killed there and his death body was recovered from that place. We find no illegality or infirmity in the impugned decision passed by the High Court Division. ..... (Para 14)

JUDGMENT

MUHAMMAD IMMAN ALI–J: This criminal petition for leave to appeal is directed against the judgment and order dated 06.06.2010 passed by the High Court Division in Criminal Appeal No.5016 of 2006 with Jail Appeal No.18 of 2007 dismissing the criminal appeal and jail appeal.

2. The fact's of the case in brief as follows:

On 29.03.1996 at about 11.30 a.m. while he was in his stationary Panshop at 84/4 East Rajabazar, the informant heard sound of gunshot and bomb coming from the direction of his house. At the same time he was informed by his neighbour Shamsul Haque that some boys, armed with Katarifle, Pistol, Chapati and bombs were chasing his full brother Mohammad Ali alias Khokan (deceased) in front of their house. In order to help his brother, the informant rushed to the front of his neighbour's house on Plot No.103, East Rajabazar, but at the gate he was chased by one Mannan of East Rajabazar, who was armed with a Pistol. At about 12.00 p.m. many people had assembled in front of the house of Hazi Lutfar Rahman on Plot No.103 East Rajabazar. The informant, on entering into the northern bed room of the said house, found the dead body of deceased Mohammad Ali alias Khokan lying dead on the floor. He had bullet and cut injuries on his person. At that time informant's mother Momtaz Begum, sister Marium Begum and deceased Mohammad Ali alias Khokan's wife Shahanaj disclosed that his brother deceased Mohammad Ali alias Khokan and his wife Shahanaj were taking breakfast and at that time Babul called away Mohammad Ali alias Khokan from the house and took him to the adjacent road in front of the place of occurrence house. Then his mother, sister and deceased's wife also came out of the house when they saw that the convict-appellant Sakil alias Saikka, accused Abul, Harun, Mannan, Babu and 10/12 unknown persons being armed with Katarifle, Pistol, Bombs and Chapati attacked deceased Mohammad Ali alias Khokan when he ran into the house situated in holding No. 103 of East Rajabazar from the back side and then the above named accused persons killed him by causing cut and shot injuries. The accused persons left the place of occurrence while firing and exploding bombs in front of the informant's house. His sister and many other people saw the occurrence and recognized the accused persons. Hence, the case.

3. Police took up the case for investigation. During investigation the officer investigating the case visited the place of occurrence, prepared inquest report on the dead body of the deceased Mohammad Ali alias Khokan and then sent the dead body to the morgue for post mortem examination, seized alamats by preparing seizure list, prepared sketch-map with index of the place of occurrence, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure and after conclusion of investigation submitted charge-sheet being No.64 dated 10.02.1998 against the convict-appellants and other accused persons under sections 302/109/34 of the Penal Code and also submitted the supplementary charge-sheet being No.671 dated 13.11.1998.

4. During trial the case record was transferred to the Court of Metropolitan Sessions Judge, Dhaka where it was registered as Metro Sessions Case No. 3792 of 1999. Cognizance was taken against the accused persons under sections 302/109/34 of the Penal Code. Subsequently, the Metropolitan Sessions Judge, Dhaka transferred the case record to the Court of Metropolitan Additional Sessions Judge, 1st Court, Dhaka for trial. During trial charge was framed by the Metropolitan Additional Sessions Judge, 1st Court, Dhaka against the convict appellants and other accused persons under sections 302/109/34 of the Penal Code. When the said charge was read over, all the accused present pleaded not guilty and claimed to be tried. During the course of trial the prosecution examined as many as 13 (thirteen) witnesses out of 20 (twenty) witnesses cited in the charge-sheet. But the defence examined none.

5. The defence case, as gathered from the trend of croas-examination, is that the convict-appellants have been falsely implicated in the instant case out of enmity and grudge..

6. After concluding the evidence of the prosecution the convict-appellants present in the dock were examined under section 342 of the Code of Criminal Procedure when again they claimed to be innocent.

7. The trial Court after due consideration of the F.I.R., charge-sheet, deposition of prosecution witnesses and other relevant papers convicted the convict-appellants Mannan (absconding), Babul (absconding), Harun (absconding), Abul (absconding), Shakil alias Saikka alias Shahin alias Comando and Babu alias Baubba alias Badal under sections 302/34 of the Penal Code and sentenced them to suffer imprisonment for life and also to pay a fine of Tk.20,000/- (Taka twenty thousand) each, in default, to suffer rigorous imprisonment for one year more. The

trial Court found accused Suiden Aslam and Anwar not guilty under sections 302/34 of the Penal Code and acquitted them of the charge leveled against them.

8. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence passed by the trial Court, the convict-appellants filed Criminal Appeal No. 5016 of 2006 with Jail Appeal No. 18 of 2007 before the High Court Division. By the impugned judgment and order, the High Court Division dismissed the criminal appeal with jail appeal and affirmed the judgment and order of conviction and sentence dated 17.10.2006 passed by the trial Court. Hence, the petitioners have filed the instant Criminal Petition for Leave to Appeal before this Division.

9. Mr. Mohammad Ali Akanda, the learned Counsel appearing for the petitioners submits that the High Court Division as well as the trial Court convicted the petitioners on the basis of deposition of P.Ws.2-4. He points out that these witnesses were declared hostile and they do not disclose anything against the petitioners and as such the High Court Division wrongly upheld the conviction of the petitioners. He further submits that the evidence of P.W.I does not corroborate the FIR and the evidence of P.Ws.2-4 does not implicate the accused in the case and as such the High Court Division arrived at a wrong decision.

10. Mr. Md. Shohrowardi, the learned Deputy Attorney General appearing on behalf of the respondent made submissions in support of the impugned judgment and order passed by the High Court Divison.

11. We have considered the submissions of the learned Counsel for both the parties and perused the impugned judgment and order of the High Court Division and other connected papers on record.

12. *It appears that the High Court Division upheld the conviction of the petitioners upon finding that although the P.Ws.2-4 were declared hostile by the prosecution, during their cross-examination by the prosecution they deposed admitting the prosecution case and as such no illegality was found in conviction of the petitioners.*

13. *We have also considered the deposition of the witnesses. The prosecution case is that the victim was chased by the accused into the house standing on Holding No. 103 and was killed there. In her cross-examination by the prosecution, upon being declared hostile, P.W.2 Fatema Begum stated, "খোকনকে আমাদের বাসার ১০৩নং পূর্ব রাজা বাজারস্থ বাসার নিচ তলায় আমার বাসার করিডোরে আমার রুমের সামনে হত্যা হয়"। Later on in her cross-examination P.W.2 Fatema Begum stated that "আসামীরা বা খোকন কতক্ষণ আমাদের বাসায় ছিল বলতে পারি না"।*

P.W.3 Zebunessa stated in her examination-in-chief that the occurrence took place in their house situated on Holding No. 103 East Raja Bazar. She was declared hostile by the prosecution. In her cross-examination by the prosecution she stated "খোকন এর মৃত দেহ আমার ভাসুরের রুমের সামনে করিডোরে পড়ে ছিল"। She further stated, "এলাকার আসামী সাকিল, বাবুল, বাবু, আবুল, হারুন, মান্নান সশস্ত্র অবস্থায় ২৯.৩.৯৬ইং তারিখ দুপুর অনুমান ১১.৩০/২.০০ টার দিকে খোকনকে ধাওয়া করে আমাদের বাসার খোলা দরজা দিয়ে ঢুকে"। P.W. 4 Morium, sister of the victim, who was also declared hostile by the prosecution, stated in her cross-examination by the prosecution that accused Babul called her brother (the victim) from their house. Although she denied having seen the accused chasing her brother into the house of Zebunessa on Holding No. 103, she stated that the police recovered her brother's dead body from the house of Zebunessa on Holding No. 103.

14. *The above excerpts of the deposition of the prosecution witnesses clearly supports the prosecution case that the victim was chased by the armed accused into the house standing on Holding No. 103 East Raja Bazar and was killed there and his death body was recovered from that place. We find no illegality or infirmity in the impugned decision passed by the High Court Division.*

Accordingly, the criminal petition is dismissed.

APPELLATE DIVISION
(Criminal)

Md. Muzammel Hossain–C.J.
Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Syed Mahmud Hossain–J.
A.H.M. Shamsuddin Choudhury–J.

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.243 OF 2012.

(At this instance of state is against an interim order of the High Court Division)

The State ..... Petitioner.

Vs.

Arman ..... Respondents.

For the Petitioner : Mr. Mahbubey Alam, Attorney General, instructed by Mr. Madhu Malati Chy Barua, Advocate-on-Record.

For the Respondent : Not Represented.

Judgment: June 2, 2013.

Code of Criminal Procedure, 1898–
Section 497–

Nari-O-Shishu Nirjatan Daman Ain, 2000–
Section 19(2)(ka)–

It is true and established law is that the High Court Division has discretionary power to grant an accused person on bail even in

respect of serious offences like the one but it should not exercise its power if there appear reasonable grounds believing as visualized in prohibitory part of section 497(1) of the code, grant or refusal of bail in respect of an offence punishable, with imprisonment for life is essentially a question of fact in each particular case and there cannot be any fixed formula for the exercise of such discretion.

The High Court Division has discretionary power to grant an accused person on bail even in respect of serious offences like the one but it should not exercise its power if there appear reasonable grounds for believing as visualized in prohibitory part of section 497(1) of the Code. Grant or refusal of bail in respect of an offence punishable, with imprisonment for life is essentially a question of fact in each particular case and there cannot be any fixed formula for the exercise of discretion. In respect of offences punishable under the Nari-O-Shishu Nirjatan Ain, there is specific bar under section 19(2)(ka) in exercising the power of granting bail without hearing the informant and that the Tribunal or Court may grant bail to an accused person on assigning proper reasons if it is satisfied that the, accused is a woman or child or sick or infirm. In this case the High Court Division has overlooked these provisions and granted bail without assigning any reason and also without hearing the informant. ..... (Para 4)

In granting bail the court should not be oblivious of the trend of rising similar nature of offences in the country. The exercise of power must be carefully balanced and weighed in the scale of justice. In such cases the Courts are bound to exercise their discretion judiciously with due care and caution because every erroneous decision is a miscarriage of justice and every miscarriage is derogatory to the common interest of the society. Therefore, it is necessary to exercise such discretion with some restraint. ..... (Para 5)

ORDER

MD. MUZAMMEL HOSSAIN-C.J: This petition at the instance of the state is against an interim order of the High Court Division enlarging the accused-respondent Arman on ad-interim bail for a period of 6 (six) months in Nari-O-Shishu case No.148 of 2011 pending before the Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi for trial. We have perused the FIR, the medical report of the victim and other materials on record.

2. Learned Attorney General argued that the High Court Division exceeded its norms in admitting the respondent on ad-interim bail against whom there are allegations of committing heinous crime. It is further contended that if an

accused person is allowed to remain on bail after committing such heinous crime which shocks one's conscience, he will be emboldened to recur similar type of offence. In view of the above, he argued that it is a fit case in which this Division should interfere with the impugned interim order.

3. On perusal of the FIR we have noticed that there are specific allegations against the accused-respondent who is 65 years old of committing sexual assault on the victim who is barely a minor girl. It is alleged that the accused was caught red handed just immediate after the incident and that he had confessed -his guilt. Accordingly, he was handed over to police on the spot. The medical report corroborates the allegations of sexual assault.

4. *The High Court Division has discretionary power to grant an accused person on bail even in respect of serious offences like the one but it should not exercise its power if there appear reasonable grounds for believing as visualized in prohibitory part of section 497(1) of the Code. Grant or refusal of bail in respect of an offence punishable, with imprisonment for life is essentially a question of fact in each particular case and there cannot be any fixed formula for the exercise of discretion. In respect of offences punishable under the Nari-O-Shishu Nirjatan Ain, there is specific bar under section 19(2)(ka) in exercising the power of granting bail without hearing the informant and that the Tribunal or Court may grant bail to an accused person on assigning proper reasons if it is satisfied that the, accused is a woman or child or sick or infirm. In this case the High Court Division has overlooked these provisions and granted bail without assigning any reason and also without hearing the informant.*

5. *In granting bail the court should not be oblivious of the trend of rising similar nature of offences in the country. The exercise of power must be carefully balanced and weighed in the scale of justice. In such cases the Courts are bound to exercise their discretion judiciously with due care and caution because every erroneous decision is a miscarriage of justice and every miscarriage is derogatory to the common interest of the society. Therefore, it is necessary to exercise such discretion with some restraint.*

6. In the case in hand, the High Court Division enlarged the accused-respondent on ad-interim bail for a period of 6(six) months on 31st January, 2012. The learned Judge-in-Chamber without making any interim order of stay directed the office to place the matter in court for hearing. In the meantime the period of interim bail expired by efflux of time. In view of the above, this petition has become infructous.

7. This petition is accordingly disposed of with, the above observations. A Division Bench presided over by Moyeenul Islam Chowdhury,J. is directed to dispose of the appeal by 20th June, 2013.

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APPELLATE DIVISION (Criminal)

Surendra Kumar Sinha–J.
Md. Abdul Wahhab Miah–J.
Nazmun Ara Sultana–J.
Syed Mahmud Hossain–J.
Muhammad Imman Ali–J.
Md. Shamsul Huda–J.

CRIMINAL PETITION FOR LEAVE TO APPEAL NO. 124 OF 2009.

(From the judgment and order dated 27.11.2008 passed by the High Court Division in Criminal Appeal No. 3730 of 2007 arising out of Sessions Case No. 145 of 2007 corresponding to Shibganj P.S. Case No. 39(4) 2007 and G.R. No. 143 of 2007.)

The State ..... Petitioner.

Vs.

Professor Md. Shahjahan Ali and others ..... Respondents.

For the Petitioner : Mr. Rajik-Al-Jalil, Deputy Attorney General, Instructed by: Mr. Md. Ferozur Rahman Advocate -on-Record.

For the Respondent No. 1 : Mr. Syed Mahbubur Rahman.

For the Respondent Nos. 2-3 : Not represented.

Judgment: February 9, 2012.

Penal Code, 1860–

Section 385/386– It is well established principle of law that when any informant lodge the F.I.R with inordinate delay with political colour created the prosecution case is shaky, doubtful and unbelievable.

Heard the learned Deputy Attorney General, perused the F.I.R., charge sheet, judgment of the trial court as well as that of the High Court Division. It appears that the High Court Division rightly assessed the evidence on record and also rightly held that the inordinate delay in lodging of the F.I.R. giving political colour created the prosecution story doubtful and unbelievable and as such the High Court rightly set aside the judgment and order of conviction and sentence, passed by the trial court. ..... (Para 5)

JUDGMENT

MD. SHAMSUL HUDA–J: This Criminal Petition for Leave to Appeal is directed by the State against the judgment and order dated 27.11.2008 passed by the High Court Division in Criminal Appeal No. 3730 of 2007 allowing the appeal by setting aside the judgment and order dated 23.7.2007 passed by the learned Sessions Judge, Chapainawabgonj in Sessions Case No. 145 of 2007 arising out of Shibganj P.S. Case No. 39(4) 2007 corresponding to G.R. No. 143 of 2007 under Section 385/386 of the Penal Code convicting the respondents under Section 386 of the Penal Code and sentencing them to suffer imprisonment for a period of 5

years and to pay a fine of Tk. 10,000/- each in default to suffer rigorous imprisonment for a period 6 months more.

2. The facts leading to disposal of the Criminal Petition for Leave to Appeal, in short, are that one Md. Panaullah initiated the case by lodging the F.I.R. on 23.4.2007 alleging inter alia that in the first part of the year 2003 he had a dispute with his brothers and sisters over the partition of paternal property. His brothers and sisters took shelter of Professor Md. Shahjahan Ali, the then Member of Parliament belonging to the Political Party, B.N.P, who demanded subscription from him. As a result he fled away from the locality out of fear and started living on the Government Khas land at Village- Rajbarihat under Nachole Police station. After about one year he came to his own house, but he was arrested in connection with a criminal case and lastly he paid Tk. 50,000/- to said Professor Md. Shahjahan Ali, M.P. by selling his Mango Grove, out of Tk. 75,000/- which was demanded by the Ex-M.P. Who accepted the said amount in cash through co-accused Shafiqul Islam. On the basis of the said allegation Police investigated the case and submitted charge sheet on 7.6.2007 under Section 385/386 of the Penal Code and the Ministry of Home Affairs accorded sanction to hold trial of the case under the Emergency Powers Rule 2007. The trial court after examining the witnesses convicted the respondents under Section 386 of the Penal Code and sentenced to suffer rigorous imprisonment as stated above.

3. During trial no defence witness was examined although prosecution examined as many as 9 witnesses out of 14 charge sheeted witnesses.

4. Being aggrieved by the judgment and order of conviction and sentence the respondent preferred Criminal Appeal before the High Court Division. A Division Bench of the High Court Division heard the appeal, considered the evidence on record and other relevant documents and arrived at a finding that the F.I.R. was lodged after lapse of considerable time and from the face of record it appears that political rivalry has given rise to this false case and the prosecution witnesses made contradictory statements and failed to prove the case beyond any reasonable doubt.

5. *Heard the learned Deputy Attorney General, perused the F.I.R., charge sheet, judgment of the trial court as well as that of the High Court Division. It appears that the High Court Division rightly assessed the evidence on record and also rightly held that the inordinate delay in lodging of the F.I.R. giving political colour created the prosecution story doubtful and unbelievable and as such the High Court rightly set aside the judgment and order of conviction and sentence, passed by the trial court.*

6. We do not find any valid ground to interfere with the impugned judgment of acquittal passed by the High Court Division.

In the result, the Criminal Petition for Leave to Appeal is dismissed.

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HIGH COURT DIVISION
(Statutory Original Jurisdiction)

Md. Rezaul Hasan–J.

COMPANY MATTER NO. 181 OF 2013

(An application under section 85(3) of the Companies Act, 1994.)

Hafiz Ahmed Mazumder and others ... . Petitioner.

Vs.

Pubali Bank Limited, having its registered office at 26 Dilkusha C/A, Dhaka-1000 and others ... Respondent.

For the petitioner : Mr. Sheikh Fazle Noor Taposh, advocate with Mr. Mohammed Mehedi Hasan Chowdhury, Advocate and Mr. A.K.M.Rabiul Hassan, Advocate with Mr. Mohammed Selim Jahangir, Advocate.

For the Respondent No.1 : Mr. Aktar Imam, Senior Advocate with Ms. Rashna Imam, Advocate and Mr. Reshad Imam, Advocate.

For Respondent No.4 : Mr. Probir Neogi, Advocate with Mr. Suvra Chakravorty, Advocate and Mr. Manzur-al-Matin, Advocate.

For Respondent No.5 : Mr. A.M.Mahbubuddin, Advocate with Mr. Saqeb Mahbub, Advocate.

Judgment: February 25, 2014

Securities and Exchange Ordinance, 1969–

Section 2CC–

Bangladesh Securities and Exchange Commission (BSEC)

Two notifications dated 20.11.2011 and 07.12.2011–

According two notifications dated 20.11.2011 and 07.12.2011 of Bangladesh Securities & Exchange Commission (BSEC) in exercised of the power vested in it under section 2CC of the Securities and Exchange Ordinance, 1969 that the directors of a public company listed with Stock Exchanges is required to hold minimum 2% shares in the paid UP capital of the company and the directors who were not holding minimum 2% shares, as required by the two notifications shall acquire 2% shares within 6(six) months period otherwise the office of defaulter director shall stand vacated.

As regards the merit of this petition, I should refer further to direction No.8 passed in the judgment and order dated 6.5.2013, passed in

Company Matter No.90 of 2013. Direction No.8 reads as follows:

"8 All the directors, who shall resign pursuant to this judgment and order, shall be eligible for re-election, on condition that they are not otherwise disqualified as per provisions of the Articles of Association or of any statute or any directive or circular of the regulatory authorities, if any, as the case may be. Since all the directors shall resign, pursuant to the direction of this court, so the question of retirement by rotation shall not arise or be raised as disqualification. All disputes, what so ever, that may arise in the course of the meeting shall be resolved in such manner as the chairman of the meeting may direct." Therefore, it was duty of the scrutiny committee of the Election Commission to ensure that the candidates are not disqualified as per directives of BSEC, contained in the two aforesaid notifications, and they have done their duty, as per this direction of the court, in issuing the impugned notice dated 14.8.2013, holding nomination papers of the petitioners invalid (emphasis added). ..... (Para 25)

Accordingly, I am of the considered view that the election commission of respondent No.2 has rightly held this petitioners nomination invalid, vide its notice dated 14.8.2013 (Annexure-D), and that the offices of the 8(eight) petitioners are liable to be vacated for not complying with the conditions to hold 2% minimum shares in the share capital of the bank, as prescribed in the BSEC Notifications dated 22.1.2011 and 7.12.2011. ..... (Para 27)

JUDGMENT

MD. REZAUL HASAN–J: This is a petition filed under section 85(3) of the Companies Act, 1994 (herein after referred as the Act) by Mr. Hafiz Ahmed Mazumder and 7 others.

2. It has been stated, amongst other, in the petition, that the petitioners are share-holders in respondent No.1 Company; that the Respondent No. 1 is a public company limited by shares incorporated under the Companies Act, 1913; it carries on business as a commercial bank through its branches located all over Bangladesh it's shares are listed and publicly traded in the Dhaka and Chittagong Stock Exchanges; that the Respondent No. 2 is the Office of the Chief Election Commissioner, for conducting election to the office of the Board of Directors in the 30th AGM of Pubali Bank Limited. The Respondent No.3 is the Registrar of Joint Stock Companies and Firms. Respondent No.4 is Bangladesh Securities and Exchange Commission (BSEC); that the Respondent No.1, the Bank, was initially established in the erstwhile East Pakistan as Eastern Mercantile Bank Limited in the year 1959 under the Companies Act, 1913;

after independence of Bangladesh in 1972 the Respondent the Bank was nationalized and renamed as Pubali Bank; that pursuant to an application filed by one Mr. Shafi Ahmed Chowdhury under section 85(3) of the Companies Act, 1994, being Company Matter No.90 of 2013, impugning, inter alia, the non inclusion of an agenda for election of directors in the 30th AGM of the respondent No. 1 bank, the Company Bench of the High Court Division, by a judgment and order dated 06.05.2013 the application with, inter alia, the following directions:

i. The Bank should hold its 30th AGM within 45 days from receiving the certified copy of the judgment and order or from sending the file of Company Matter No. 90 of 2013 to the company section of the High Court Division, whichever is earlier, after issuance of notice including the agenda relating to retirement and election of directors.

ii. Mr Fida M Kamal, Senior Advocate and former Attorney General for Bangladesh, was appointed as the chairman to preside over the 30th AGM.

iii. All directors including chairman of the Bank was directed to submit resignation letters within 15 day to Mr Fida M Kamal. The resignation letters would take effect from the date and time the new board of directors, elected in the 30th AGM, would call their first meeting immediately after the 30th AGM.

iv. All directors who shall resign pursuant to the judgment and order shall be eligible for re-election, on condition that they are not otherwise disqualified as per provisions of the Articles of Association or any statute or any directive or circular of the regulatory authorities, if any, as the case may be; it is further stated that as contained in directive 8 of the operative portion of the judgment dated 06.05.2013, the Respondent Bank, immediately appointed a neutral Election Commission comprising of Professor Fariduddin Ahmed as the Chief Election Commissioner, Dr MA Eusuf and Dr. Kazi Maruful Islam as the Election Commissioners for conducting the 30th AGM of Respondent No.1 Company; that in compliance with the judgment and order dated 06.05.2013 of the Hon'ble High Court Division, all directors, including chairman of the Bank, submitted their resignation letters to Mr. Fida M Kamal; that owing to the inability to secure a venue within the prescribed time frame provided by the High Court Division, the Respondent No. 1 was constrained to file an application to the Hon'ble High Court Division to extend the time for holding the AGM and on the application of the Respondent No.1 Bank, the High Court Division, by its order dated 09.07.2013, extend the time to hold the AGM on 21.08.2013; that meanwhile, although the Bank had made all preparations for convening the AGM on 21.08.2013, upon miscon-

ceived application of the petitioner of Company Matter No. 90 of 2013, Mr Shafi A Chowdhury, addressed to Mr. Fida M Kamal demanding cancellation of nomination paper of the petitioners from contesting the directors' election in the 30th AGM of the respondent Bank, the scrutiny committee of the Respondent No. 2, Office of the Chief Election Commissioner, illegally and unlawfully issued a notice dated 14.08.2013 holding that the petitioners were not qualified to contest in the election for office of the directors as they did not have 2% shareholding in their individual name, in the paid up capital of the bank, on the record date; that the Respondent No.2's deliberation as contained in the impugned notice in respect of the disqualification of the petitioners in contesting the election for directorship in the upcoming 30th AGM is based on a misconceived interpretation of the Notification No. SEC/CMRRCD/2009-193/119/Admin/34 dated 22.11.2011 issued by the Respondent No.4, Securities and Exchange Commission, for the following reasons, namely- the Respondent No. 4, subsequent to issuance of the Notification No. SEC/CMRRCD/2009-193/119/ Admin/ 34 dated 22.11.2011, had further issued two clarifications, being Notification No SEC/CMR-RCD/2009-193/120/Admin, dated 07.12.2011 and letter No. SEC/ SRMIC/95-299/384, dated 12.02.2012; that in the Notification dated 07.12.2011, the Respondent No.4 has clearly stated that the 2% share holding requirement was not applicable to independent/nominated directors of any listed company; that subsequently, in the letter dated 12.02.2012, the SEC had clearly stated that the 2% share qualification was applicable for sponsor directors; it had also clarified that the following categories of directors would be considered as independent directors and accordingly the condition to hold 2% minimum shares in the paid up capital of the bank was not applicable on them, i.e. (i) to directors elected from amongst the ordinary shareholders, (ii) to directors nominated from amongst the bank's depositors and (iii) to ex–officio directors; that due to the historical background in respect of establishment of Pubali Bank Limited, as set out in paragraph 4 above, the Respondent Bank does not have any sponsor director. Accordingly, the petitioners are ordinary shareholders and have submitted their nomination for election as directors from the category of ordinary shareholders, that it is submitted that due to the reasons stated above, the Respondent No.2 had illegally and unlawfully disqualified the petitioners for nomination as Directors of Respondent Bank in the upcoming 30th AGM; that in the premises the petitioner have prayed, upon hearing the parties, to declare illegal and having no legal effect the impugned notice dated 14.08.2013

(Annexure-D) of the Respondent No. 2, i.e. the Office of the Chief Election Commissioners, whereby the nomination of the petitioners, contesting for the post of directors, was declared invalid, as they do not have requisite 2% shareholding in their individual names as on record date (04.04.2013) and also prayed that pending disposal of the petition, stay operation of the relevant portion of the notice dated 14.08.2013 in relation to the declaration of ineligibility of the petitioners to contest in the post of directors as they do not have requisite 2% shareholding in their individual names as on record date (04.04.2013) in the paid up capital of the company (bank) and to direct Respondent No. 2 to allow the petitioners to contest in the election of the directors in the 30th AGM of the Respondent No. 1 bank.

3. It further appears from the record that the petition was moved before and admitted by a Vacation Bench of this Division, hearing company matter, by an order dated 20.8.2013. It also appears from the said order dated 20.8.2013 that operation of impugned notice dated 18.3.2013 (Annexure-D), issued by the respondent No.2, in so far as it relates to disqualifying the petitioners from being candidate for election to the office of directors of the bank, for not holding minimum 2% shares in the paid up capital of the bank, was stayed for a period of 3(three) months from date and the respondents were directed to allow the petitioner to contest for the post of the directors in the AGM to be held on the following day (i.e. on 21.8.2013). As such the present Board of the Bank is consisting of 13 directors in total, out of whom 5 directors are holding minimum 2% shares in the paid up capital and 8 directors (the petitioners in this case) are holding less then 2% shares in the paid up capital of the bank.

4. The respondent Bank (PBL) has filed an affidavit-in-opposition mainly denying the allegations made in the petition and asserting that the statements made in several paragraphs of the petition are in substance misconceived, erroneous and/or false. It has further been submitted in the affidavit-in-opposition that the notification dated 22.11.2011 read with notification dated 07.12.2011 and letter dated 12.02.2012 of the Respondent No.4 (BSEC) states the legal position unequivocally inasmuch as only the Sponsor Directors/ Promoters are required under the law to hold minimum 2% shareholding in the paid up capital of a bank in order to contest in the election in the said bank for the post of directors and that Independent Directors i.e. (1) Directors elected from amongst ordinary shareholders, (ii) the directors nominated from amongst the bank's depositors and (iii) the ex-officio directors are exempted from this legal requirement. It has also been submitted on behalf of the Bank that the interpretation of the Notification dated 22.11.2011 read with Notification dated 07.12.2011 by BSEC cannot differ from one bank to another, since the said notifications are applica-

ble to all listed companies and as such any interpretation given by BSEC to any listed company shall be applicable to all listed companies. The Bank (Respondent No.1) does not have any sponsor director as is evident from the historical background of the Bank as well as from the Memorandum of Association of the Bank. The petitioners are all ordinary shareholders and are elected by ordinary shareholders. As such, there is no requirement for them to hold 2% shareholding in the paid up capital of the Bank. Finally, it has been submitted that the matter was infructuous in that the issues raised in the petitioner are past and closed transaction.

5. The respondent No.4, Bangladesh Securities and Exchanges Commission (BSEC), has also filed an affidavit-in-opposition mainly disowning the interpretation given by the petitioners to the Notification of the Securities Exchange Commission (BSEC). It has been stated in their affidavit-in-opposition that, by notification dated 20.11.2011 the BSEC has imposed certain conditions as narrated in paragraph No.4 of the affidavit-in-opposition and the notification has been issued in exercise of the power vested in the BSEC under section-2CC of the Security Exchange Ordinance, 1969 (the Ordinance). It has also referred to another notification dated 7.12.2011, in paragraph No.4 of the affidavit-in-opposition, and further asserts that, in order to enable the petitioners or directors of a banking and other listed companies to hold and acquire 2% shares in the paid up capital, in the banking and other listed companies, the application of sub-Rule (2) of Rule 4 of the Security & Exchange Commission (Insider Trade Restriction) Rules, 1995 i.e সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন, (সুবিধাভোগী ব্যবসা নিষিদ্ধকরণ) বিধিমালা ১৯৯৫ has been exempted, so that the defaulter directors can acquire the minimum 2% required shares as per conditions laid down in the aforesaid two notifications. Then, having denied the statements made in paragraphs No.8 and 9 of the petition, BSEC has also asserted in paragraph No.6 of the affidavit-in-opposition that the statement made in paragraph No.10 of the petition is not correct. In this respect it has stated that clause (d) of the notification dated 21.11.2011 clearly stipulates that each director, other than independent directors, of any listed company shall hold minimum 2% share in the paid-up capital, of a listed company, otherwise there shall be a casual vacancy in the office of the concerned director. It has also been mentioned that the notification dated 22.11.2011, issued by the Commission being empowered by section 2CC of the Securities & Exchange Ordinance, 1969 and Parliament has delegated the power to the Commission for framing securities law and accordingly these notifications have legal force. But, the subsequent clarification dated 12.02.2012 of the notification dated 22.11.2011 was not given or issued in exercise of the authority vested in BSEC under section 2CC of the Securities and Exchange

Ordinance, 1969. Besides, the clarification dated 12.02.2012 was not published in the official gazette, unlike two other notifications, and it can not override the force of the conditions laid down in the said two notifications dated 22.11.2011 and 7.12.2011 that were published in the official gazette, requiring holding of minimum 2% shares by all directors of a listed company, other than independent directors. The petitioners cannot get exemption from holding 2% share in the paid up capital of Pubali Bank Ltd., as they are not 'independent directors'. At the initial stage of notification dated 07.12.2011, six months time was allowed to fulfill the condition of holding minimum 2% shares, but the petitioners neither took this opportunity, nor had purchased the required shares within the stipulated time. Under the above circumstances it can be resolved that respondent No.2 has rightly rejected the nomination papers of the petitioners. At paragraph No.7 of the affidavit-in-opposition, it has stated that it is not correct to say that 2% minimum share holding requirement is not applicable to the petitioners. The petitioners, it is also stated, ought to have fulfilled the conditions laid down in notification dated 22.11.2011, wherein it has been categorically mentioned that minimum 2% share is to be held by each director of a listed company.

6. The respondent No.5, having denied the allegations made in the petition as regards the interpretation of the aforementioned notifications dated 22.11.2011 and 7.12.2011 and letter dated 12.2.2012, further states that on a proper construction of the aforesaid Notifications dated 07.12.2011 and 07.12.2011, any director (except independent director) not holding the minimum of 2% shares in the respondent Bank shall be ineligible to contest in any election of directors, unless the requirement is fulfilled. As the petitioners do not hold the minimum requirement of 2% shares in the respondent Bank, as stipulated in the BSEC Notifications dated 22.11.2011 and 7.12.2011,the respondent No. 2 has disqualified the petitioners from contesting in the election for directorship. The shareholding of the petitioners in the respondent bank is as follows:

Name of Candidate	No. of shares held	Shares as % of Total Paid-up Capital
Mr. Hafiz Ahmed Mazumder MP	2,907,256	0.350
Mr. Mohammad Yaqub	544,960	0.060
Mr. Ahmed Shafi Choudhury	68,090	0.010
Mr. Muhammad Faizur Rahman	357,563	0.040
Mr. Fahim Ahmed Faruk Chowdhury	12,705,828	1.510
Mrs. Rumana Sharif	45,680	0.010
Mr. Azizur Rahman	25,025	0.003
Mrs. Suraiya Rahman	9,212,645	1.100

the respondent No. 5 further states that the letter dated 12.02.2012 was neither

issued by the SEC in exercise of its power under section 2CC of the Securities and Exchange Ordinance, 1969, nor it was issued as a clarification of the aforesaid Notifications dated 22.11.2011 or 07.12.2011. The letter was issued by a Director of BSEC, namely one Mr. Abu Rayhan Mohammad Masum Billah, which was addressed to the Managing Director of Dutch Bangla Bank Limited. It is categorically stated that the said letter bears no indication that it is a "Notification". It did not mention that it was passed in exercise of Section 2CC of the Securities and Exchange Ordinance, 1969 or any other law. Furthermore, the said letter does not specifically claim it is applicable to any other listed company other than the addressee of the letter, i.e. Dutch Bangla Bank Limited; that even though the said letter claims to be regarding the Notification dated 07.12.2011, it directly attempts to override the said Notification by stating that other Directors can be deemed to be Independent/Nominated directors under the meaning of the said Notification, whereas the provision of clause (b) of the Notification clearly states that it is applicable to "Each Director other than Independent/ Nominated director(s)"; that the Respondent No. 5 himself sought clarification from the Securities and Exchange Commission regarding the interpretation of the Notifications dated 22.11.2011 and 07.12.2011 specifically for application to the case of the Respondent No. 1 (Bank). On this subject, the Respondent no. 5 wrote a letter dated 24.04.2013 addressed to the Chairman of the Commission stating as follows:

"With reference to my earlier letter dated April 15, 2013 in connection with minimum 2 per cent share requirement for becoming a Director in the Board of a bank, I was confirmed by your concerned department and also by your good-self over telephone that irrespective of any sponsor/promoters and general shareholders, must have minimum 2 percent share to become a Director, but the Pubali Bank management repeatedly confirmed that as per latest decision/notification of SEC that above 2 per cent minimum share requirement is not applicable in case of Pubali Bank Directors since none of them are sponsor directors. All the present Directors of the Board are general shareholders.

In view of the same, I respectfully request you to reconfirm the same that minimum 2 percent shares are not only applicable for sponsor/promoter directors, but also for general shareholders to become a Director in the Board"; that in response to the letter of the Respondent No. 5 to the Commission, the Commission replied, vide a letter bearing Memo No. SEC/ SRMIC/94-169/624 dated 25.07.2013, stating categorically as follows:

"In this connection, the issues raised by you in the referred letter

are clearly stated in Commission's Notification No. SEC/CMR-RCD/2009-193/119/ Admin/ 34 dated November 22, 2011. So you are advised to follow the conditions of said notification."; that in the above reply of BSEC no mention was made to the letter written to Dutch Bangla Bank Ltd. on 12.02.2012. Rather the Respondent No. 5, who raised the specific issue as to whether the minimum 2 per cent shareholding requirement was applicable to the petitioners, was advised to only refer to the Notification dated 22.11.2011; that the Chief Election Commissioner, Professor Fariduddin Ahmed and the two other Commissioners, having received the objection of the Respondent No. 5, vide his letters dated 13.08.2013, personally visited the Securities and Exchange Commission to seek clarification from the Chairman of the BSEC as to the applicability of the Notification dated 22.11.2011. Based on the said clarification from the BSEC, the Election Commission was pleased to pass the order declaring the candidacy of the petitioners invalid; that the requirement in the BSEC Notification dated 22.11.2011 of 2% shareholding applies to all directors except independent directors. This has plainly been clarified by the SEC vide the Notification dated 07.12.2011. Both the notifications state the law very clearly, i.e. the 2% share requirement is applicable for all directors only excluding independent/nominated directors. There is no ambiguity or uncertainty about the requirement as stipulated by the SEC; that the SEC in a Notification, being No. SEC/CMR-RCD/2006-158/134/ Admin/ 44 dated 07.08.2012, defined independent directors as follows:

1.2 Independent Directors

(ii) For the purpose of this clause "independent director" means a director-

(a) who either does not hold any share in the company or holds less than one percent (1%) shares of the total paid-up shares of the company;

(b) who is not a sponsor of the company and is not connected with the company's any sponsor or director or shareholder who holds one percent (1%) or more shares of the total paid-up shares of the company on the basis of family relationship. His/her family members also should not hold above mentioned shares in the company:

Provided that spouse, son, daughter, father, mother, brother, sister, son-in-law and daughter-in-law shall be considered as family members;

a) who does not have any other relationship, whether pecuniary or otherwise, with the company or its subsidiary/associated companies;

(iii) the independent director(s) shall be appointed by the board of directors and approved by the shareholders in the Annual General Meeting (AGM).

1.3 Qualification of Independent Director (ID)

(i) Independent Director shall be a knowledgeable individual with integrity who is able to ensure compliance with financial, regulatory and corporate laws and can make meaningful contribution to business.

(ii) The person should be a Business Leader/Corporate Leader/ Bureaucrat/ University Teacher with Economics or Business Studies or Law background/Professionals like Chartered Accountants, Cost & Management Accountants, Chartered Secretaries. The independent director must have at least 12 (twelve) years of corporate management/professional experiences; that, evidently, an independent/nominated directors comprise those directors who are appointed by the board of directors themselves, generally on a part-time basis, and are approved by the shareholders in the AGM. They are included in the board of a company because of their special skills or qualification in a particular field which acts as a 'creative contribution' to the board. The instant petitioners do not fulfill the aforesaid criteria of the SEC Notification dated 07.08.2012 for independent directors. Hence, the petitioners cannot be called independent/nominated directors in complete contravention of the said Notification; that in the Judgment and Order dated 06.05.2013 delivered by the Hon'ble High Court in the Company Matter No. 90 of 2013, the Hon'ble Court Division, heavily criticized the Directors holding their positions in the Respondent No. 1 Company without the requisite minimum shares. The relevant part of the Judgment and Order dated 06.05.2013 reads as follows:

"9. I have also taken notice of the fact that the present Chairman, namely Mr. Hafiz Ahmed Majumder is holding only 0.35% shares in the Bank (respondent No. 1), he was last elected in the 18th AGM held on 10.11.2001, that since then he is holding the office and that the respondent Bank or the board of directors are allowing the same board members to remain in office, since 2003, without transacting the agenda relating to retirement and election of directors and thereby the existing directors have evaded their liability to retire by rotation and have infringed the provisions of Article 90 of the Articles of Association as well as the provisions of the Bank Companies Act, 1991. This conduct, on the part of the respondent Bank and its directors, is quite contrary to the law declared by the apex court, vide the case reported in 32 BLD (AD) (2012) 115: Md. Magakat Harun & Ors Vs. Export Import Bank of Bangladesh Ltd."; that since the petitioners are not independent/nominated directors of the Respondent No. 1 Bank, the 2% shareholding requirement is applica-

ble to them. As the petitioners did not possess the requisite percent of shares, as on the record date, they are not entitled to hold the office of director or contest in the directorship election; that the petitioners have cunningly provided a misconceived interpretation of 'independent directors' to take an unfair advantage from this Hon'ble Court. The requirement of 2% shareholding is applicable for any directors (whether sponsor director or not) other than independent directors. The assertion by the plaintiffs that the requirement of 2% shareholding was applicable only for sponsor directors is also an erroneous interpretation of law. Accordingly he has prayed that the petition is liable to be dismissed.

7. The learned Advocate Mr.Mohammed Mehedi Hasan Chowdhury, appearing along with the learned Advocates, Mr.A.K.M.Rabiul Hassan and Mr.Mohammed Selim Jahangir, having placed the petition alongwith the documents annexed therewith, submits at the out set that, pursuant to the judgment and order dated 6.5.2013 of the High Court Division, the respondent-bank immediately appointed a neutral election commission comprising of Professor Fariduddin Ahmed as a Chief Election Commissioner, Dr. M.A. Eusuf and Dr. Kazi Masuful Islam as the election commissioners for conducting election to the office of the directing in the 30th AGM of respondent company. Thereafter the Bank has completed all preparation for convening the Annual General Meeting on 21.8.2013, that is within period extended by the court, but the respondent No.5 (Mr.Shafi A Chowdhury) addressed a letter dated 13.8.2013 to Mr. Fida M Kamal (the neutral chairman appointed by the court) for cancellation of nomination paper of the petitioners from contesting for the office of the directors in the 30th AGM of the respondent bank and that the scrutiny committee illegally and unlawfully issued a notice dated 14.8.2013 (Annexure-D) holding that the petitioners were not qualified to contest in election (in the 30th AGM) as directors as they did not have minimum 2% shareholding in their individual name as on the record date. That this notice dated 14.8.2013 has been challenged in the instant petition since, he further submits, according to the conditions laid down in BSEC Notification No.SEC/CMRRCD/2009-193/119/Admin/34 dated 22.11.2011 (Annexure-E2) read with Notification No.SEC/CMRRCD/2009-193/120/Adm dated 7.12.2011 (Annexure-E), and Letter No.SEC/SRMIC/95-299/384 dated 12.2.2012 (Annexure-E1), the petitioners are not required to hold 2% shares, because they fall with the category of 'independent directors' as per clarification given in the aforesaid letter dated 12.2.2012 (Annexure-E1) of the BSEC. He continues that in the aforesaid letter dated 12.2.2012, issued to clarify the aforesaid two notifications as regards holding of 2% shares in the paid up capital by the

directors of a listed company, it has been stated that the 2% shares requirement was not applicable to the (i) directors elected from amongst ordinary share holders, (ii) directors nominated from amongst the bank's depositors and (iii) ex-officio directors. He emphatically argues that since, in the clarification letter dated 12.2.2012, the respondent No.4 (BSEC) has clearly stated that the directors elected by ordinary shareholders are deemed to be 'independent directors' and, therefore the petitioners are not subject to the condition requiring to hold 2% shares, hence the aforesaid two notifications dated 22.11.2011 and 7.12.2011, issued by the BSEC under section 2CC of the Ordinance is no more applicable in respect of these petitioners and they were valid candidates for the election to the office of directors and their offices are not liable to be vacated. He also submits that the aforesaid two notifications (Annexure-E and E-2) apply only to sponsors directors. As the respondent No.1 (Bank) was a nationalized bank and the sponsor directors were representatives of the government, each holding one share in the Bank (as nominee share holders), as would be evident from the Memorandum of Association, so there is no sponsor directors at present in the respondent Bank and that the petitioners not being sponsor directors they does not come within the mischief the aforesaid notifications. Hence, the scrutiny committee of the election commission has illegally issued the notice dated 14.8.2013 (Annexure-D) disqualifying the petitioners, from contesting in the election, for not holding 2% shares in the Bank, and thereby the scrutiny has misinterpreted and misapplied those two notifications in respect of the petitioners. As such, he concludes, this petition has clear merit and the same may be allowed.

8. The learned Advocate Mr. Aktar Imam, appearing alongwith the learned Advocates Ms.Rashna Imam and Mr.Reshad Imam, having placed the affidavit –in-opposition filed on behalf of the Bank, first of all submits that whether interference at this stage, when the next AGM is impending is at all called for. He next submits that the neutral chairman appointed by the court has not felt it necessary to address the objection raised by the respondent No.5 who (the neutral chairman) was supposed to decide the issues as per direction Nos.8 and 9 of this court, as given in the judgment dated 06.5.2013, that the dispute, if any, arises at the time of election will be settled by the neutral chairman. He also submits that in the case of finding any ambiguity in relation to the legal position regarding holding of 2% shares, this court may direct the BSEC to issue a fresh notification to clarify the position further. In the alternative, he continues, that if this court finds a case to interfere with the current board of the directors in the Bank, then it may cause serious disturbance in running the affairs of the respon-

dent No.1-(Bank) owing to creating casual vacancies so close to the next AGM, hence instead, the court may direct all directors to retire in the next AGM (i.e in the 31st AGM) and the respondent No.1 (Bank) to ensure that the requirement of holding minimum 2% shares may be complied with in relation to eligibility of all candidates for the office of directors in the next AGM. Thereafter, referring to the statements made in paragraph No.6 of the affidavit-in-opposition of BSEC, the learned advocate submits that the statements made by the of BSEC, as given in paragraph No.6 of it's affidavit-in-opposition, is not correct. Because, he emphasizes, that the clarification letter dated 12.2.2012 was issued by BSEC, in exercised of the power vested in BSEC under section 20A of the Ordinance, and this clarification has the force of law and is binding on all concerned in as much as it says that director elected from amongst the ordinary share-holders shall be deemed to be an 'independent director.'

9. The learned Advocate Mr. Probir Neogi, appearing alongwith the learned Advocates Mr. Suvra Chakravorty and Mr. Manzur-al-Matin, appearing for the BSEC (respondent No.4), on the other hand, referring to the aforesaid two notifications dated 22.11.2011 (Annexure-E-2 to the petition) and 7.12.2011 (Annexure-E to the petition) submits that these two notifications were issued by the BSEC in exercised of the power vested in it under section 2CC of the Ordinance and in no ambiguous terms it has been made clear in these two notifications that the directors of a public company listed with the Stoke Exchanges is required to hold minimum 2% shares in the paid up capital of the company and that the directors who were not holding minimum 2% shares, as required by these notifications, shall acquire 2% shares within 6(six) months period otherwise the office of the defaulter director shall stand vacated. He further submits that, in order to facilitate acquisition of the required shares to meet up the minimum 2% share holding requirement, the BSEC has exempted the defaulter directors from the operation of sub-rule (2) of Rule-4 of the Securities of the Exchange Commission (Insider Trade Restriction) Rules, 1995, but the petitioners, neither holding nor having acquired 2% minimum shares in the paid up capital of the company, pursuant to these two notifications, as on the record date, the scrutiny committee the election commission has rightly declared their nomination invalid. He also submits that the question as to whether 2% shares are required to be hold by the directors of a company listed with the Stock Exchanges shall be determined solely with reference to the conditions laid down in the aforesaid two notifications dated 22.11.2011 and 7.12.2011(Annexure-E2 and E to the petition) respectively, issued by the BSEC in exercise of the power

vested in it under section 2CC of the Ordinance, not with reference to the letter dated 12.2.2012 (Annexure-E-2 to the petition) which does not have any force of law. Accordingly, he has clarified the position of the BSEC as regards interpretation of these two notifications vis-à-vis the letter dated 12.2.2012 and emphatically submits that the condition of holding minimum 2% shares by the director of a public company listed with the Stock Exchanges is mandatory. The learned Advocate for the BSEC also submits that in the Gazette Notifications dated 14.12.2011 and Gazette Notification dated 29.12.2011,both these notifications, dated 22.11.2012 and 7.12.2011, were published by the BSEC for information of all concerned and the said notifications were issued under the classification 'notification issued by private individual and corporation etc.' But, letter dated 12.2.2012 was never published in any Gazette Notification. He then submits that the court can take judicial notice of these two notifications published in Bangladesh Gazette and brought the same to the notice of the court by filing the same.

10. The learned Advocate Mr.A.M.Mahbubuddin, appearing alongwith the learned Advocate Mr.Saqeb Mahbub, for respondent No.5, having placed the affidavit-in-opposition and drawing my attention to the documents annexed therewith submits that the notification dated 22.11.2011 and 7.12.2011, also annexed to the affidavit-in-opposition, were published in the Gazette Notification by BSEC. These two notifications were admittedly issued in exercise of the power vested in BSEC under section 2CC of the Ordinance. These two notifications stand in force on the date of 30th Annual General Meeting of the respondent-Bank. According to the condition No. (d), laid down in notification dated 22.11.2011, each director, other than independent directors, of a listed company shall hold minimum 2% shares in the paid up capital, otherwise there shall be a casual vacancy of director. Next, referring to notification dated 7.12.2011, the learned advocate further submits that it has been reiterated in this notification that each director, other than an independent director, of a listed company holding less then 2% shares of the paid up capital shall acquire the minimum required 2% shares within 6 months of issuance of Notification No. SEC/CMRRCD/2009-193/119/Admin/34 dated 22.11.2011. But the petitioners have neither held this minimum 2% shares in the paid up capital of the company, as on the record date, before holding the 30th AGM, nor they have acquired 2% shares within the aforesaid stipulated time of 6 months. As such their candidacy was rightly held illegal by the scrutiny committee , vide its notice dated 14.8.2013 (Annexure D) and this does not call for interference by this court inasmuch as it is clearly founded upon legal footing furnished by the aforesaid two notifica-

tions, having the force of law. Then, referring to the letter dated 12.2.2012 (also annexed as annexure-3 in affidavit-in-opposition), the learned Advocate submits that this letter was not issued with reference to any specific provision of Security Exchange Commission Ordinance, 1969 (the Ordinance). It was rather issued with reference to a request apparently made by Dutch Bangla Bank Limited. Since this clarification letter does not have the force of law, therefore this clarification letter dated 12.2.2012 was not published in the Gazette. It is, at best an internal correspondence between Dutch Bangla Bank Limited and the Securities Exchange Commission. Moreover, this clarification letter dated 12.2.2012 says that the directors elected from amongst the ordinary share holders shall be deemed an 'independent directors'. Law does not permit, he continues, such a clarification allowing resorting to fiction in defining or giving meaning to the words "independent directors". On the contrary, he submits, that Notification No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.8.2012 (Annexure-6 to the Affidavit-in-opposition), at clause 1.2, has defined "independent director." According to this notification an "independent director" means a person " who either does not hold any share in the company or holds less than 1% shares of the total paid-up shares of the company." The purpose of this interpretation is that an independent director shall not have any stake or capacity to control or otherwise to influence the decision making process by the Board of Directors or in the general meetings or in the management of the Bank. He then submits that the respondent No.1 being a Bank, the Bank Companies Act, 1991, as Amended by Bank Company amendment Act, 2013, vide gazette notification dated 22.7.2013, has defined 'independent director' in explanation to subsection (9) of section 15 of the Amended Act. According to the explanation given in sub-section (9) of section 15 of the Bank Companies Act, as amended in 2013, "an independent directors means a person who is independent from the shareholding and management of the Bank and who does not have any apparent or actual interest in any matter of the concerned Bank". But, in the instant case, although these petitioners are holding less than minimum 2% shares, they are, however, holding shares in the respondent Bank, had submitted nomination papers for election to the office of the directors and tried to influence the election, business of the board, the management and the affairs of the bank. As such they are clearly excluded from the statutory interpretation of "independent director" given in sub-sections (9) of section 15 of the Bank Companies Act, as amended in 2013, by Act No.27 of 2013 published in official gazette on 22.7.2013, nor they can be called independent with reference to their acts and deeds. As such, the clarification given in letter dated 12.02.2012 of

BSEC, purporting to give an interpretation of 'independent director' is totally contrary to the statutory definition of 'independent director' given in sub-section (9) of section 15 of the Bank Companies Act as well as it contradicts meaning of the independent director given in clause 1.2 of notification dated 7.8.2012 of the BSEC. (Annexure-6). Hence, this clarification, given in letter dated 12.02.2012, can not be accepted and it cannot override the specific provisions of law defining independent director or the notification dated 7.8.2012, issued under section 2CC of the Ordinance. He further submits that there is no ambiguity in the aforesaid two notifications dated 22.112011 and 7.12.2011 that each director of a public company listed with the Stock Exchanges shall hold minimum 2% shares in the paid up capital of the company or shall make up the deficiency, if their share holding falls below 2%, within 6 months, as has been emphasized in the notification dated 7.12.2011. Besides, he continues, BSEC, by filing an affidavit-in-opposition has given interpretation of these two notifications vis-à-vis the letter dated 22.11.2011 and has also made it clear that each director, except an independent director, of a company listed with the Stock Exchanges should have minimum 2% shares in the listed company, otherwise their office shall be liable to be vacated. Since this requirement of holding minimum 2% shares is visited with consequence of vacation of offices of the defaulter directors, needless to say it that this provision is mandatory. Accordingly, the candidature of these petitioners were rightly held invalid by the scrutiny committee of the election commission, vide a notice dated 14.8.2013 (Annexure D), impugned in the instant matter and they are continuing as directors in violation of the clear provisions of law and notifications having the force of law. Therefore their offices, assumed illegally since the very inception, is void abinitio and the same are liable to be vacated. Accordingly, he submits, that this petition has no merit and the same is liable to be dismissed and the office of these petitioners are liable to be declared vacant for non-compliance of the conditions laid down in the notifications dated 22.11.2011 read with notification dated 7.12.2011.

11. I have heard the learned Advocates appearing for the petitioner, for the respondent Nos.1, 4 and 5. Perused the petition the petitioner's supplementary affidavit, the affidavit-in-reply alongwith the affidavits-in-opposition filed by respondent Nos. 1, 4 and 5.

12. It is to be noted here that the Company Matter No.90 of 2013, although has come up in the list alongwith Company Matter No.181 of 2013, had already been disposed of. The Matter No.90 of 2013 has been kept in the list for examination of the records of the case only, not for the purpose of hearing simultaneously.

13. It also appears from the impugned letter dated 14.8.2013

(Annexure-D) that, the Election Commission, appointed by the Bank, had received 2o nomination papers, in total, from the candidates for election to the post of Directors. Out of 20 candidates, the Scrutiny Committee of the Election Commissioner found 5 candidates qualified for election to the office of the directors in the 30th AGM of the Bank. But 13 candidates, out of total 20 candidates, were found disqualified to participate in the election, as they did not have minimum 2% shares in the paid up capital of the bank, as per conditions laid down in BSEC Notifications dated 22.11.2011 and 7.12.2011, published in Bangladesh Gazettees, Extra Issues, dated 14.12.2011 and 29.12.2011, respectively. Out of this disqualified 13 candidates, 8 candidates. (the petitioners) participated in the petition pursuant to interim order dated 20.8.2013, passed in this case.

14. As regards the merit of the case, I have taken the notifications dated 22.11.2011 and 7.12.2011 alongwith the clarification letter dated 7.12.2011, annexed by the petitioner as well as by the respondent No.5, for consideration. It is pertinent to quote clauses (a), (d) and (e) of the BSEC notification dated 22.11.2011, that reads as follows:

(a) All sponsors/promoters and directors of a company listed with any stock exchange shall all time jointly hold minimum 30% (thirty percent) shares of the paid-up capital of the company. The sponsors/promoters and directors holding less then 30% (thirty percent) shares shall acquire the rest amount within 6(six) months of issuance of this Notification.

(a) .....

(b) .....

(d) Each director other than independent director (s) of any listed company shall hold minimum 2% (two percent) shares of the paid up capital, otherwise there shall be a casual vacancy of director.

(e) In case of aforesaid casual vacancy of director, any individual holding 5% (five percent) or more shares of the paid up capital shall be entitled to be a director in the next Annual General Meeting (AGM)."

15. Along side, (emphasis added) I have considered the BSEC notification dated 7.12.2011 and it is also pertinent to quote clause (a) A and (b) of this notification, that reads as follows:

(a) The sponsors/promoters and directors of any listed company jointly holding less than 30% (thirty percent) shares of the paid-up capital of the company have been exempted from the উপবিধি (২) of বিধি (৪) of the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যবসা নিষিদ্ধকরণ) বিধিমালা ১৯৯৫ to acquire the minimum required 30% (thirty percent) shares.

(b) Each director, other than independent/Nominated Director (s), of any listed company holding less than 2% (two percent) shares of the paid-

up capital shall acquire the minimum required 2% (two percent) shares within 6(six) months of issuance of the Notification NO.SEC/CMRRCD/2009-193/119/Admin/34 dated November 22, 2011. In this regard the respective directors has been exempted from the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যবসা নিষিদ্ধকরণ) বিধিমালা ১৯৯৫. (emphasis added)

16. These two notifications, quoted above and to be frequently referred to hereinafter, have been issued by the BSEC in exercise of the powers vested in it under section 2CC of the Ordinance and both these notifications have been published by the BSEC in Bangladesh Gazette, extra issues, on 14.12.2011 at page 15317, and on 29.12.2011 at page 1556. There is no dispute that these two notifications have the force of law.

17. In the notification dated 22.11.2011, vide clause (a), all sponsors/promoters and directors of the company listed with any Stock Exchange are required to jointly hold minimum 30% shares in the paid up capital. This condition, apparently, applies to all directors i.e. to sponsor or promoter directors as well as to other directors who are not sponsors or promoters. There is no ambiguity that this Notifications dated 22.11.2011, at clause (a), lays down condition that the directors, both promoters/sponsors and other directors of any listed company shall jointly hold minimum 30% shares of the paid up capital, or if they jointly hold less than 30% then they shall fulfill the requirement within 6(six) of months issuance of this Notification. Clause(a) of this notification, markedly, omitted to mention 'independent director'. But, this omission in clause (a) will lead to no confusion, because an 'independent' director is not legally obliged to hold any share, vide the meaning given to this expression, as noted herein before. On the contrary, a mere perusal of the condition laid down in clause (d) of this same Notification dated 22.11.2011 requires, in no uncertain term, that each director, other than 'independent director', shall hold minimum 2% shares in the paid up capital, otherwise their office is liable to be vacated in consequence thereof. Accordingly, I find that condition (d), laid down in this Notification dated 22.11.2011, provides for vacation of office of a defaulter director. Therefore, I hold that condition (d) of Notification dated 22.11.2011, is mandatory. However, it is also to be noted here that no provision for vacation of office, in the event of default, has been kept under condition (a) of this notification dated 22.11.2011, though it has required that 30% shares are to be jointly held or acquired by the directors (other then independent director, of course) within 6(six) months (empasis supplied).

18. Next, I have taken for consideration the notification dated 07.12.2011, issued by BSEC, in exercise of power vested in it under section 2CC of the

Ordinance. This notification, as well, has been published in Bangladesh Gazette, extra issue, as mentioned herein above. This Notification is, indeed, continuation of the previous Notification dated 22.11.2011, which is referred to in this notification dated 07.12.2014, at clause (b), and both these Notifications are to be read and considered together in order to arrive at the findings on the issues that have emerged in this matter.

19. This Notification dated 07.12.2011, vide clause (a), has exempted the directors from the mischief of application of sub-rule (2) of Rule 4 of the Securities & Exchange Commission (Insider Trade Prohibition) Rules, 1995 i.e. সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যবসা নিষিদ্ধকরণ) বিধিমালা, ১৯৯৫, to enable the defaulter directors in jointly acquiring 30% shares in a listed company. Sub-rule (2) of Rule 4 of সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যবসা নিষিদ্ধকরণ) বিধিমালা, ১৯৯৫ read as follows:

৪। সুবিধাভোগী ব্যবসা ইত্যাদি নিষিদ্ধকরণ।–

(১) .....

(২) ষ্টক এক্সচেঞ্জ তালিকাভুক্ত কোম্পানীর কোন স্পন্সর (Sponsor), পরিচালক, কর্মকর্তা বা কর্মচারী নিরীক্ষক বা নিরীক্ষক বা নিরীক্ষাকার্যে সম্পৃক্ত ব্যক্তি, পরামর্শক বা আইন উপদেষ্টা, কিংবা Securities and Exchange Ordinance, 1969 (XVII of 1969) Hl section 12 H উলি-খিত beneficial owner, উক্ত কোম্পানীর বার্ষিক হিসাব সমাপ্তির তারিখ হইতে উক্ত হিসাব কোম্পানীর পরিচালনা পর্ষদ (Board of Directors) কর্তৃক চূড়ান্তভাবে বিবেচিত, গৃহীত বা অনুমোদিত হওয়ার তারিখ পর্যন্ত সময়কালে আলোচ্য কোম্পানীর শেয়ার ক্রয় বিক্রয় কিংবা অন্য কোন প্রকারে হস্তান্তর বা গ্রহন করিতে পারিবেন না।" The intention in providing this exemption, to ensure acquisition of 30% shares jointly by the directors of a listed company, in my considered view, signifies that this condition is mandatory too.

20. Thereafter, having considered clause (b) of Notification dated 7.12.2011, I find that clause (b) has laid down condition, in an unequivocal language, that each director, other than independent/Nominated Directors(s), of any listed company holding less than 2% (two present) shares of the paid up capital shall acquire the minimum 2% (two percent) shares within 6(six) months of issuance of the Notification No. SEC/CMRRCD/2009-193/119/34 dated 22.11.2012. In this case too, the respective director has been exempted from the উপবিধি (২) of বিধি ৪) of the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যবসা নিষিদ্ধকরণ) বিধিমালা ১৯৯৫. Therefore, evidently and clearly, this Notification, with reference to and in continuation of the Notification dated 22.11.2011 has required holding of minimum 2% shares or to acquire the said quantity of shares within the next 6 months and in order to facilitate such acquisition it has exempted the directors, who are holding shares less then minimum required numbers, from application of sub-rule-2 of Rule-4 of Securities Exchange Commission (Insider Trading Restriction) Rules 1995. (emphasis added).

21. These two notifications, having considered together, leave no room for

any doubt that the directors, whether sponsors/promoters or not, of all public company listed with the Stock Exchanges, must hold minimum 2% shares in the paid up capital of the concerned company, unless he is an 'independent director'.

22. Who is or are 'independent directors' has been defined in the explanation to sub-section (9) of section 15 of the Bank Companies Act, 1996, (as amended in 2013) and in the Notification No.SEC/CMRRCD/2006-158/134/Admin/44 dated 07.8.2012 of BSEC. Hence, the clarification given in letter dated 12.2.2012 of the BSEC stating that a director elected from the ordinary share holding shall be deemed to be 'independent director' is, in my view, in clear conflict with definition and meaning of 'independent director' given in the statute as well as in the Notification mentioned above. Besides, I find that this clarification given in the letter dated 12.2.2011, was not issued under any provisions of the Securities Exchange Ordinance, 1969. Apparently it was issued and in response to some correspondence with Dutch Bangla Bank Limited. It can, at beset, be considered as an internal correspondence between the BSEC and Dutch Bangla Bank Limited, hence it was not published in Bangladesh gazette. Moreover, the fiction resorted to by BSEC, in interpreting an 'independent director' and thereby purporting to bring a share holder director, within the confine of 'independent director', is not permissible in law. BSEC cannot publish any notification by resorting to any fiction, nor can it modify, nullify or override the specific provision of law by attributing a perverse, absurd or conflicting meaning of the expression 'independent director'. It therefore has no force of law, in my considered opinion. This position has also been admitted by BSEC, in paragraph No. 6 of its affidavit in opposition (emphasis added).

23. Hence, the persons, who have designedly resorted to fiction and introduced such a clarification to frustrate the intent and purport of law and to frustrate the initiative to bring discipline in the capital market by ignoring unambiguous language of law, should be identified and be brought to the book for abusing their official position to secure unlawful gain to themselves or to others and for doing acts prejudicial to the national economic interest.

24. Next, turning my attention to the submission of Mr. Aktar Imam, appearing for the Bank, that the dispute should have been referred to and be settled by the neutral chairman appointed by the court, vide judgment dated 6.5.2013, passed in Company Matter No.90 of 2013, I find that, the respondent No.5 had raised objections before the neutral chairman appointed by the court, vide his letters all dated 13.08.2013 and, on the other hand, the Security Committee of the Election Commission of the Bank has found the petitioners not qualified for holding election for not having 2% minimum

paid up shares in the Bank, as informed vide their letter dated 14.8.2013 (Annexure-D).But the petitioners have filed the instant petition and obtained an order of stay and an interim order on 20.8.2013 and participated in the election. In this circumstances, there having an order of the High Court Division staying operation of notice dated 14.8.2013, the neutral chairman appointed by the court to preside over 30th AGM of the Bank, had no scope sit in appeal over the interim order passed by this court. Hence, I do not find any substance in the submission.

25. *As regards the merit of this petition, I should refer further to direction No.8 passed in the judgment and order dated 6.5.2013, passed in Company Matter No.90 of 2013. Direction No.8 reads as follows:*

"8 All the directors, who shall resign pursuant to this judgment and order, shall be eligible for re-election, on condition that they are not otherwise disqualified as per provisions of the Articles of Association or of any statute or any directive or circular of the regulatory authorities, if any, as the case may be. Since all the directors shall resign, pursuant to the direction of this court, so the question of retirement by rotation shall not arise or be raised as disqualification. All disputes, what so ever, that may arise in the course of the meeting shall be resolved in such manner as the chairman of the meeting may direct." Therefore, it was duty of the scrutiny committee of the Election Commission to ensure that the candidates are not disqualified as per directives of BSEC, contained in the two aforesaid notifications, and they have done their duty, as per this direction of the court, in issuing the impugned notice dated 14.8.2013, holding nomination papers of the petitioners invalid (emphasis added).

26. I have also considered that, 5 directors remains in the board of directors of the Bank and 5 directors forms quorum and there will be no stalemate in running the affairs of the Bank.

27. *Accordingly, I am of the considered view that the election commission of respondent No.2 has rightly held this petitioners nomination invalid, vide its notice dated 14.8.2013 (Annexure-D), and that the offices of the 8(eight) petitioners are liable to be vacated for not complying with the conditions to hold 2% minimum shares in the share capital of the bank, as prescribed in the BSEC Notifications dated 22.1.2011 and 7.12.2011.*

28. In view of the deliberation recorded above this petition is dismissed and the petitioners are hereby held disqualified to hold office of the directors in the respondent Bank and their office shall stand vacated with immediate effect. The respondent-Bank is accordingly directed to file the particulars of directors that have taken place in Form-XII with the Registrar of Joint

Stock Companies and Firms, reflecting the change in the board of directors pursuant to this judgment and order.

The stay order granted at the time of admission of this petition is hereby vacated.

The parties will bear their respective cost.

Case cited:

* ***Md. Magakat Harun & Ors Vs. Export Import Bank of Bangladesh Ltd, 32 BLD (AD) (2012) 115.***

HIGH COURT DIVISION
(Special original jurisdiction)

Zinat Ara–J.

J.B.M. Hassan–J.

WRIT PETITION NO. 9295 OF 2008

(An application under Article 102 (2) of the Constitution of the People's Republic of Bangladesh.)

Agrani Bank Ltd ..... Petitioner.

Vs.

The Secretary, Ministry of law, Justice and Parliamentary Affairs. Government of the People's Republic of Bangladesh and others .... Respondent.

For the petitioner : Mr. A.K.M. Badrudduza, Advocate.

For the respondent No. 5 : Mr. Abdus Sattar Khan, Advocate.

Judgment: March 12, 2012.

Artha Rin Adalat Ain, 2003–Sections 33(1)–33(7)–

Code of Civil Procedure, 1908–Order XXI, Rule 90–

When it is proved that in auction sale offered price is abnormally and shockingly low in that case Artha Rin Adalat is not bound to accept the highest offer and when there is alternative provisions for disposing of the judgment debtor's property towards satisfaction of the decretal dues in the Artha Rin Adalat Ain, 2003.

We also find that section 33 of the Ain, 2003 has provided, the alternative provisions for disposing of the judgment-debtor's property towards satisfaction of the decretal dues. In this process, if the Adalat fails to hold the auction in pursuance of the section 33(1)-33(4) of the Ain, 2003, the law empowers the Adalat to issue certificate of possession in respect of the property under section 33(5) of the Ain, 2003 and that the decree-holder taking possession and control over the property, can sell it following the provisions of section 33(1)-33(4) of the Ain, 2003. Besides, on the prayer of the decree-holder, the Adalat can issue certificate of title in favour of the decree holder in respect of :he property as provided in section 33(7) of the Ain, 2003 following the

conditions as laid down in the said sub-section.

Therefore, the Adalat is not obliged to sell the property in any manner or at any price for satisfaction of the decree, particularly when the decree holder specifically raises objection to the highest offer being abnormally low and that the amount is too inadequate to satisfy the decretal dues. ..... (Para 14)

JUDGMENT

J.B.M. HASSAN–J: This Rule was issued calling upon the respondents to show cause as to why the order dated 16.03.2006 (Annexure-A/1 to the writ petition) passed by the learned Judge, Artha Rin Adalat, Narayangonj in Miscellaneous Case No. 26 of 2005 (arising out of Mortgage Execution Case No. 123 of 2003) and order dated 27.10.2005 (Annexure-C/1 to the supplementary affidavit of the writ petition) passed by the learned Judge, Artha Rin Adalat, Narayangonj in Mortgage Execution Case No. 123 of 2003 should not be declared to have been passed 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.

2. Pertinent facts necessary for disposal of the Rule are as follows:

The petitioner as plaintiff instituted Mortgage Suit No. 48 of 2002 before the Artha Rin Adalat, Narayangonj (shortly, the Adalat) for realization of loan money amounting to Tk. 8,61,120/- against the respondent Nos. 4-7 ultimately, the suit was decreed by judgment and decree dated 03.10.2002 (decree signed on 10.10.2002) for Tk. 8,61,120/-. Pursuant to the said judgment and decree, the petitioner filed Mortgage Execution Case No. 123 of 2003 before the Adalat. In the execution proceeding, the Adalat fixed the date for auction sale of the mortgaged property and accordingly, at the instance of the petitioner (decree holder), the auction notice was published in "The Daily Jugantar" for selling the mortgaged property mentioning estimated value of the property at Tk. 11,00,000/-. On 27.10.2005, the date of auction sale of the property, the highest offer was made at Tk. 3.00,000/- out of three bidders. The highest offer having been found with abnormally low price, the petitioner (decree holder Bank) instantly filed an application raising objection to the said offered price and prayed for cancellation of the auction sale. The Adalat by order dated 27.10.2005 rejected the said application accepting the highest price of Tk. 3,00,000/- of the respondent No.3 and directed him to pay the balance amount of the bid by 06.11.2005.

3. Thereafter, the petitioner filed an application under Order XXI Rule 90 of the Code of Civil Procedure (the Code) on 30.11.2005 for setting aside the auction sale. The application was registered as Miscellaneous Case No. 26 of 2005 and ultimately, the Miscellaneous Case was rejected by

order dated 16.03.2006. Against the aforesaid order, the petitioner preferred Miscellaneous Appeal No. 55 of 2006 before the learned District Judge, Narayangonj and it was transmitted to the Court of the learned Additional District Judge, Narayangonj for disposal. After hearing, the learned Additional District Judge, Narayangonj by judgment and order dated 15.04.2008 dismissed the said miscellaneous appeal.

4. In this back drop, the petitioner filed this writ petition challenging the order dated 16.03.2006 rejecting the miscellaneous case filed under Order XXI Rule 90 of the Code and also the order dated 27.10.2005 passed by the Adalat in Mortgage Execution Case No.123 of 2003 rejecting the application of the petitioner praying for cancelling the auction sale and obtained the present Rule.

5. The judgment debtor as respondent No. 5 entered appearance in the Rule by filing affidavit-in-opposition. It is stated in the affidavit-in-opposition that in the auction notice the estimated value of the mortgaged property was shown at Tk. 11,00,000/-. Despite the Adalat accepted the highest offer at Tk. 3,00,000/- which was shockingly low. In view of the facts, the respondent No. 5 supports the Rule.

6. Mr. A.K.M. Badrudduza, the learned Advocate appearing for the petitioner has taken us through the writ petition, the impugned order, supplementary affidavit and other materials available on record. The learned Advocate submits that in the auction notice the estimated value of the property has been shown at Tk. 11,00,000/- and that finding the exorbitantly low price of Tk. 3,00,000/- as highest offer, the petitioner immediately raised objection to the price, and prayed for canceling the auction sale as per proviso to section 33(2) of the Artha Rin Adalat Ain, 2003 (shortly, the Ain, 2003) and the Adalat rejected the Said application by the impugned order dated 27.10.2005 (Annexure-C1 to the supplementary affidavit of the writ petition). He frankly concedes that wrongly the petitioner filed the miscellaneous case under Order XXI Rule 90 of the Code for setting aside the auction sale and that in the application of the miscellaneous case, the assertion of the petitioner was against the order of the Adalat accepting the highest offer being shockingly low and that on wrong advice the petitioner also challenged the order of the miscellaneous case in the miscellaneous appeal preferred before the learned District Judge, Narayangonj. In the light of the aforesaid submission, the learned Advocate does not like to press the order dated 16.03.2006 passed in miscellaneous case No. 26 of 2005.

7. However, the learned Advocate has drawn our attention to the application dated 27.10.2005 and the order of the Adalat dated 27.10.2005 passed on the said application (Annexure-C and C/l respectively to the supplementary affidavit of the writ petition). Challenging

the propriety of the order dated 27.10.2005 in this Rule, the learned Advocate submits that proviso to section 33(2) of the Ain, 2003 empowers the Adalat to reject the offer (auction proposal) if it is found abnormally low and that in the auction notice the estimated price of the property having been shown at Tk. 11,00,000/-, the highest offer at Tk. 3,00,000/-, on the face of it, abnormally low. He further submits that immediately, after finding the highest offer at Tk. 3,00,000/- the petitioner raised objection against the said price and prayed before the Adalat, not to accept the said offer, being shockingly low. But the Adalat on misconception of the legal proposition of section 37 of the Ain, 2003, rejected the said application accepting the offer at Tk. 3,00,000/. He also submits that the borrower also raised objection against the highest offer at Tk. 3,00,000/- being shockingly low price. Lastly, the learned Advocate submits that the Adalat is not obliged to sell the property by any manner when the law has provided the alternative option to the decree holder towards satisfaction of the decree by taking control and possession of the property under section 33(5) of the Ain, 2003 and or the Adalat can issue certificate of title in respect of mortgaged property in favour of the decree holder under section 33(7) of the Ain, 2003.

Mr. Md. Abdus Sattar Khan, the learned Advocate for the respondent No.5 (the borrower-judgment-debtor) concedes the submissions of the learned Advocate for the petitioner. He also submits that the offer at Tk. 3,00,000/- was shockingly low and the Adalat on misconception of law as well as on facts accepted the said price by the impugned order dated 27.10.2005.

8. Though notice was duly served upon the respondent No. 3, the auction purchaser, but he has not appeared in the Rule.

9. We have gone through the writ petition, supplementary affidavit thereto, affidavit-in-opposition, impugned order and other materials as available on record.

10. It appears that Rule was issued to examine the propriety of the order dated 16.03.2006 passed by the Adalat in Miscellaneous Case No. 26 of 2005 arose out of Mortgage Execution Case No. 123 of 2003 and also the order dated 27.10.2005 passed by the Adalat in Mortgage Execution Case No. 123 of 2003. The learned Advocate does not like to press the Rule so far as it relates to the order dated 16.03.2006 submitting that it was filed by the petitioner in a wrong forum or misconception of law.

11. In view of the facts, let us examine the propriety of the order dated 27.10.2005 passed by the Adalat rejecting the application filed by the petitioner raising objection to the highest offer at Tk. 300,000/- being abnormally low.

Section 33 of the Ain, 2003 is the relevant law involved for auction sale of

the mortgaged property for satisfaction of the artha rin decree. For better understanding, the provision of section 33 of the Ain, 2003 as was prevailing at the relevant time is quoted herein below:

"৩৩।(১) অর্থ ঋণ আদালত ডিক্রী বা আদেশ জারীর সময় কোন সম্পত্তি বিক্রয়ের ক্ষেত্রে বাদীর খরচে বিজ্ঞপ্তি প্রচারের তারিখ হইতে অন্যূন ১৫(পনের) দিবসের সময় দিয়া সীলমোহরকৃত টেন্ডার আহ্বান করিবে, উক্ত বিজ্ঞপ্তি কমপক্ষে বহুল প্রচারিত একটি বাংলা জাতীয় দৈনিক পত্রিকায়, তদুপরি ন্যায় বিচারের স্বার্থে প্রয়োজন মনে করিলে স্থানীয় একটি পত্রিকায়, যদি থাকে, প্রকাশ করিবে; এবং আদালতের নোটিশ বোর্ডে লটকাইয়া ও স্থানীয়ভাবে ঢোল সহরতযোগেও উক্ত বিজ্ঞপ্তি প্রচার করিবে।

(২) প্রত্যেক দরদাতা উদ্বৃত দরের ২৫% এর সমপরিমান টাকা জামানতস্বরূপ ব্যাংক ড্রাফট বা পে-অর্ডারের আকারে আদালতের অনুকূলে দরপত্রের সহিত দাখিল করিবেন, দরপত্র সরাসরি দরপত্র বাক্সে কিংবা রেজিষ্ট্রিকৃত ডাকযোগে নির্ধারিত সময়ের মধ্যে নির্ধারিত কর্তৃপক্ষের নিকট প্রেরনের মাধ্যমে দাখিল করিবেন; এবং দরদাতা, দর গৃহীত হইবার পরবর্তী ১০(দশ) দিবসের মধ্যে সমদুয় মূল্য পরিশোধ করিবেন এবং তাহা করিতে ব্যর্থ হইলে, আদালত তাঁহার উক্ত জামানতের টাকা বাজেয়াপ্ত করিবে;

তবে শর্ত থাকে যে, এই উপ-ধারার অধীন দরপত্রে সম্পত্তির প্রস্তাবকৃত মূল্য অস্বাভাবিকভাবে অপর্যাপ্ত বা কম প্রতীয়মান হইলে, আদালত, দরপ্রস্তাব বাতিল করিতে পারিবেন।

(৩) উপ-ধারা (২) এর অধীন জামানত বাজেয়াপ্ত হইলে উহার অর্থ ডিক্রীদারকে প্রদান করা হইবে, ডিক্রীকৃত দাবীর সহিত উক্ত অর্থ সমন্বয় করা হইবে, এবং অতঃপর আদালত দ্বিতীয় সর্বোচ্চ দরদাতা কর্তৃক উদ্বৃত দর এবং পূর্বে বাজেয়াপ্তকৃত জামানত একত্রে সর্বোচ্চ দরদাতা কর্তৃক উদ্বৃত দর অপেক্ষা কম না হইলে, উক্ত দ্বিতীয় সর্বোচ্চ দরদাতাকে সম্পত্তি নিলাম খরিদ করিতে আহ্বান করিবে; এবং দ্বিতীয় সর্বোচ্চ দরদাতা আহূত হইবার পরবর্তী ১০(দশ) দিবসের মধ্যে সম্পূর্ণ মূল্য পরিশোধ করিবেন এবং তাহা করিতে ব্যর্থ হইলে তাঁহার জামানত বাজেয়াপ্ত হইবে এবং জামানতের উক্ত অর্থ ডিক্রীদারকে ডিক্রীর দাবীর সহিত সমন্বয় করিবার জন্য প্রদান করা হইবে।

(৪) কোন সম্পত্তি উপ-ধারা (১), (২) ও (৩) এর বিধান অনুসারে নিলামে বিক্রয় করা সম্ভব না হইলে, আদালত পুনরায় কমপক্ষে বহুল প্রচারিত ২(দুই)টি বাংলা জাতীয় দৈনিক পত্রিকায়, তদুপরি ন্যায় বিচারের স্বার্থে প্রয়োজন মনে করিলে স্থানীয় একটি পত্রিকায়, যদি থাকে, উপ-ধারা (১) এর অনুরূপ পদ্ধতিতে বিজ্ঞপ্তি প্রকাশ করাইয়া এবং আদালতের নোটিশ বোর্ডে নোটিশ টাংগাইয়া ও স্থানীয়ভাবে ঢোল সহরতযোগে সীলমোহরকৃত টেন্ডার আহ্বান করিবে; এবং বিক্রয় ও বাজেয়াপ্ত বিষয়ে উপ-ধারা (২) ও (৩) এ উল্লিখিত বিধান অনুসরণ করিবে।

(৫) কোন সম্পত্তি উপ-ধারা (১), (২), (৩) ও (৪) এর বিধান অনুসারে বিক্রয় করা সম্ভব না হইলে, উক্ত সম্পত্তি ডিক্রীকৃত দাবী পরিপূর্ণভাবে পরিশোধিত না হওয়া পর্যন্ত, দখল ও ভোগের অধিকারসহ ডিক্রীদারের অনুকুলে ন্যস্ত করা হইবে, এবং ডিক্রীদার উপ-ধারা (১), (২), (৩) ও (৪) এর বিধান অনুসারে উক্ত সম্পত্তি বিক্রয় করিয়া অপরিশোধিত ডিক্রীর দাবী আদায় করিতে পারিবে, এবং আদালত ঐ মর্মে একটি সার্টিফিকেট ইস্যু করিবে।

(৬) ডিক্রীকৃত অংকের অতিরিক্ত অর্থ বিক্রয় বাবদ আদায় হইলে, উক্ত অতিরিক্ত অর্থ দায়িককে ফেরৎ প্রদান করিতে হইবে, এবং ডিক্রীকৃত অর্থ ডিক্রীর দাবী অপেক্ষা কম হইলে অবশিষ্ট অর্থ বাবদ, ২৮ ধারার বিধান সাপেক্ষে, আরো জারীর মামলা গ্রহণযোগ্য হইবে।

(৭) উপ-ধারা (৪) ও (৫) এর বিধান সত্ত্বেও, ডিক্রীদার, উল্লিখিত সম্পত্তি মালিকানাসত্ত্বে পাইতে আগ্রহী মর্মে আদালতের নিকট লিখিতভাবে আবেদন করিলে, আদালত উপ-ধারা (১), (২) ও (৩) এর বিধানাবলীর কোনরূপ হানি না ঘটাইয়া, উপ-ধারা (৪) ও (৫) এর কার্যক্রম অনুসরন করা হইতে বিরত থাকিবে; এবং ডিক্রীদারের প্রার্থিতমতে উল্লেখিত

সম্পত্তির স্বত্ত্ব ডিক্রীদারের অনুকুলে ন্যস্ত হইয়াছে মর্মে ঘোষণা প্রদানপূর্বক তৎমর্মে একটি সনদপত্র জারী করিবে এবং জারীকৃত এইরূপ সনদপত্র সত্ত্বের দলিল হিসাবে গণ্য হইবে; এবং আদালত উহার একটি অনুলিপি সংশ্লিষ্ট স্থানীয় সাব-রেজিষ্ট্রারের অফিসে নিবন্ধনের জন্য প্রেরণ করিবে।

(৮) বর্তমানে প্রচলিত অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, উপ-ধারা (৭) এর অধীনে জারীকৃত সনদপত্র বাবদ কোন কর বা রেজিষ্ট্রেশন ফি আদায়যোগ্য হইবে না।

(৯) উপ-ধারা (৫) এর অধীনে সম্পত্তির দখল ও ভোগের অধিকার অথবা উপ-ধারা (৭) এর অধীনে সম্পত্তির স্বত্ত্ব ডিক্রীদারের অনুকুলে ন্যস্ত হইলে, ধারা ২৮ এর বিধান সাপেক্ষে, উক্ত ডিক্রী জারী মামলার চূড়ান্ত নিষ্পত্তি হইবে।"

12. In the present case before us the auction notice was published in "The Daily Jugantar" as per section 33(1) of the Ain, 2003 for selling the mortgaged property mentioning estimated value of the property at Tk. 11,00,000/-. On 27.10.2005, the date of auction sale, 3 (three) bidders participated in the bid with their respective price and the highest offer was made by the respondent No. 3 at Tk. 3,00,000/-. On the very day, the petitioner filed an application raising objection to the offered price on the ground that the price was abnormally low and the petitioner prayed for canceling the auction sale. It further appears that the Adalat rejected the said prayer assigning the reason that he was required to dispose of the execution case by 150 days as per section 37 of the Ain, 2003. By filing affidavit-in-opposition the borrower (respondent No. 5) also submits that the offered price of the property is exorbitantly low.

13. Proviso to section 33(2) of the Ain, 2003 empowers the Adalat to cancel the proposal of the bidder if the offered price of the property is found abnormally low. In this case, admittedly the estimated value has been shown in the auction notice at Tk. 11,00,000/-. Therefore, the highest offer at Tk. 3,00,000/-, on the face of it, appears to be abnormally low. Moreover, the borrower, as the land owner also admits that the price is shockingly low. In the circumstances, the Adalat ought to have rejected the bidders offer at Tk.3,00,000/- instead of accepting it by the impugned order dated 27.10.2005. It also appears that in passing the impugned order, the Adalat did not discuss about the value .of the property, inspite of the fact that the petitioner raided objection specifically about the price. Further it has already been settled by a good number of cases that provision of section 37 of the Ain, 2003 regarding time limit for disposing of the execution case, is not mandatory rather it is directory. The Adalat misconceived the legal position and thereby considering the time frame for disposing of the execution case rejected the application for canceling the auction sale accepting the objected low price. Thus, the impugned order suffers from gross illegality and as such, it is liable to be interfered by this Court.

14. *We also find that section 33 of the Ain, 2003 has provided, the alternative provisions for disposing of the judgment-debtor's property towards satisfaction of the decretal dues. In this process, if the Adalat fails to hold the auction in pursuance of the section 33(1)-33(4) of the Ain, 2003, the law empowers the Adalat to issue certificate of possession in respect of the property under section 33(5) of the Ain, 2003 and that the decree-holder taking possession and control over the property, can sell it following the provisions of section 33(1)-33(4) of the Ain, 2003. Besides, on the prayer of the decree-holder, the Adalat can issue certificate of title in favour of the decree holder in respect of :he property as provided in section 33(7) of the Ain, 2003 following the conditions as laid down in the said sub-section.*

Therefore, the Adalat is not obliged to sell the property in any manner or at any price for satisfaction of the decree, particularly when the decree holder specifically raises objection to the highest offer being abnormally low and that the amount is too inadequate to satisfy the decretal dues.

15. In view of the above discussions, we are led to hold that the Adalat committed error of law, apparent on the face of the record, in passing the impugned order dated 27.10.2005 and as such, it warrants interference by this Court.

In the result, the Rule is made absolute in part. The order dated 27.10.2005 passed by the Adalat (respondent No.2) in Mortgage Execution Case No. 123 of 2003 (Annexure-C/1 to the supplementary affidavit of the writ petition) is hereby declared to have been passed without lawful authority and is of no legal effect.

No costs.

The ad-interim order of stay stands vacated.

Communicate the judgment and order to the respondent No. 2 expeditiously.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md. Ashfaqul Islam–J.
And
Md. Ashraful Kamal–J.

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

WRIT PETITION NO. 1322 of 2010
With
WRIT PETITION NO. 7318 of 2010
WRIT PETITION NO. 7316 of 2010
WRIT PETITION NO. 7317 of 2010
WRIT PETITION NO. 6240 of 2009
WRIT PETITION NO. 7814 of 2012
WRIT PETITION NO. 7831 of 2012
WRIT PETITION NO. 7832 of 2012
WRIT PETITION NO. 7833 of 2012
WRIT PETITION NO. 7834 of 2012
WRIT PETITION NO. 15367 of 2012
WRIT PETITION NO. 15662 of 2012

WRIT PETITION NO. 15665 of 2012
WRIT PETITION NO. 6862 of 2011
WRIT PETITION NO. 11135 of 2013
WRIT PETITION NO. 11136 of 2013
WRIT PETITION NO. 11137 of 2013

Freight Management Limited .....
.....Petitioner.
(In writ petition No. 1322 of 2010).
SG Logistics (Pvt.) Limited .....
.....Petitioner.
(In writ petition No. 7318 of 2010).
Expolanka Bangladesh Limited .....
..... Petitioner.
(In writ petition No. 7316 of 2010).
SDV Bangladesh (Pvt.) Limited .....
..... Petitioner.
(In writ petition No. 7317 of 2010).
Wings Air Cargo Limited .....
..... Petitioner.
(In writ petition No. 6240 of 2009).
EBD Limited ..... Petitioner.
(In writ petition No. 7814 of 2012).
Solidan Marine Ltd. ..... Petitioner.
(In *writ* petition No. 7831 of 2012).
NIB Trans Lines Ltd. ..... Petitioner.
(In writ petition No. 7832 of 2012).
Awards Transportation Ltd. .....
..... Petitioner.
(In writ petition No. 7833 of 2012)
Aryan Freight Lines Limited .....
..... Petitioner.
(In writ petition No. 7834 of 2012).
Novo Aviation Services Ltd. .....
..... Petitioner.
(In writ petition No. 15367 of 2012).
Multi Freight Ltd ..... Petitioner.
(In writ petition No. 15662 of 2012).
Corporate Transport ..... Petitioner.
(In writ petition No. 15665 of 2012).
GTS Logistic International Ltd. .....
..... Petitioner.
(In writ petition No. 6862 of 2011).
Seagold Supply Chain Management Ltd. ..... Petitioner.
(In writ petition No. 11135 of 2013).
Harbour Logistics (Pvt.) Ltd. .....
..... Petitioner.
(In writ petition No. 11136 of 2013).
Fastway Global Logistics Bd (Pvt.) Ltd. ..... Petitioner.
(In writ petition No. 11137 of 2013).

Vs.

Bangladesh Bank and others .....
..... Respondents.

For the petitioner (In W.P. No. 1322 of 2010, 6240 of 2009, 7831 of 2012, 7832 of 2012,7833 of 2012, 7834 of 2012, 15665 of 2012, 6862 of 2011, 11135 of 2013, 11136 of 2013, 11137 of 2013) : Mr. Masud-R-Sobhan, Advocate with Mrs. Fatema S. Chowdhury, Advocate.

For the petitioner (In W.P. No. 7318 of 2010, 7316 of 2010, 7317 of 2010, 7814 of 2012) : Mr. Tanjib-ul-Alam, Advocate.

For the petitioner (In W.P. No. 15367 of 2012, 15662 of 2012) : Dr. A.K.M. Ali, Advocate with Mr. Habib-Un-Nabi, Advocate.

For the respondent (In W.P. No. 1322 of 2010, 7318 of 2010, 7316 of 2010, 7317 of 2010, 6240 of 2009, 7814 of 2012, 7831 of 2012, 7832 of 2012, 7833 of 2012, 7834 of 2012, 15367 of 2012, 15662 of 2012, 15665 of 2012.) : Mr. Forrukh Rahman, Advocate.

For the respondents (In W.P. No. 6862 of 2011) : Mr. Shamim Khaled Ahmed, Advocate.

For the Respondents : Mr. S. M. Moniruzzaman, D.A.G with Ms. Khairun Nessa, Ms. Promila Biswas, A.A.Gs.

Judgment: February 23, 2014.

Guidelines for Foreign Exchange Transactions of Bangladesh Bank–

Section 8(1) of chapter 22– It is established Law that in order to get a Rule of mandamus petitioners must show their legal claim is rooted in the statute and it is a mandatory requirement that the applicant for mandamus should have a legal specific right to enforce the performance of those duties and when any statutory duty imposed upon any public bodies in that case mandamus can be granted against the public bodies for performing the public duties.

Since, admittedly the petitioners are not carriers; therefore, this section has no manner of application to them.

It is a well settled principle of law that in order to get a Rule of mandamus the petitioners must show that their claim is rooted in the statute or statutory Rule.

So, it has always required that the applicant for a mandamus should have a legal specific right to enforce the performance of those duties.

In the case of Queen v. Guardians of the Lewisham Union, reported in (1897) 1 QB 498 it was observed;

"This court would be far exceeding its proper functions if it were to

assume jurisdiction to enforce the performance by public bodies of all their statutory duties without requiring clear evidence that the person who sought its interference had a legal right to insist upon such performance." ..... (Para 29)

In the case of Talekhal Progressive Fisherman Co-operative Society Ltd. Vs. Bangladesh and others reported in 1981 BLD (AD) 103 wherein it has been observed:

"In order to entitle a person to ask for performance of any public duty by mandamus it is necessary to show that he has a legal right for claiming such performance part from the fact that he is interested in the performance of the duty."

The case of National Engineers vs. Ministry of Defence reported in 44 DLR (AD) (1992) 179 our Apex Court held thus:

"In order to enforce the performance by public bodies of any public duty by mandamus, the applicant must have a specific legal right to insist upon such performance ".

A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the public bodies and there is a failure on the part of those public bodies to discharge their statutory obligations. The paramount function of a writ is to compel performance of public duties prescribed by statute and to keep public bodies exercising public functions within the limits of their jurisdiction. Therefore, mandamus may issue to compel the public bodies to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. .... (Para 30)

JUDGMENT

MD. ASHRAFUL KAMAL–J: Since in these 17(seventeen) Writ Petitions, common questions of fact and law are involved, those are heard and disposed of by this single Judgment.

2. In Writ Petition No. 1322 of 2010 a Rule Nisi was issued calling upon the respondents to show cause as to why the requirement that a Master Bill of Lading i.e. second Bill of Lading inserting the name of the bank as Authorized Dealer (AD) as consignee instead of the petitioner's or it's designated agent's name as consignee being beyond the guidelines contained in section 8(1) of Chapter 22 of the Guidelines for Foreign Exchange Transactions of Bangladesh Bank (Annexure-C) should not be declared to have been passed without lawful authority and is of no legal effect.

3. Brief facts, necessary for the disposal of these Rules, are as follows;

The petitioners are Freight Forwarders and have been engaged in Freight Forwarding business. They obtained licenses as per provisions of the Freight Forwarding Agents (Licensing and Administration) Rules 2008 pursuant to section 207 of the Customs Act, 1969.

4. The petitioners as freight forwarding agents export goods to their destinations on behalf of the exporters and issues bill of lading known as house bill. The shipper issues master bill of lading on the basis of house bill prepared by a freight forwarding agent and endorsed by the bank.

5. At present, in Bangladesh, it is a mandatory provision that the house bill of lading issued by the freight forwarding agent and the master bill of lading issued by the carrier has to be endorsed by the concerned bank/authorized dealer.

6. Being aggrieved by and dissatisfied with the aforesaid mandatory requirement of the respondents with regard to the house bill of lading issued by the freight forwarding agent and the master bill of lading issued by the carrier and required to be endorsed by the concerned bank/authorized dealer, the petitioners preferred these writ petitions and obtained the present Rules.

7. In all the petitions it is the clear and specific claim of the petitioners that the respondents ought to give permission to them to ship consignment as agents of the exporters on the basis of bill of lading (house bill of lading) issued by the petitioners and endorsed by the bank/ authorized dealer and without endorsing the master bill of lading issued by the carrier.

Mr. Masud-R-Sobhan, with Mrs. Fatema S. Chowdhury, the learned Advocates appearing for the petitioners in W.P. No. 1322 of 2010, 6240 of 2009, 7831 of 2012, 7832 of 2012,7833 of 2012, 7834 of 2012, 15665 of 2012, 6862 of 2011, 11135 of 2013, 11136 of 2013 and 11137 of 2013, Mr. Tanjib-ul-Alam, the learned Advocate appearing for the petitioners in W.P. No. 7318 of 2010, 7316 of 2010, 7317 of 2010 and 7814 of 2012, and Dr. A.K.M. Ali, with Mr. Habib-Un-Nabi, the learned Advocates appearing for the petitioners in W.P. No. 15367 of 2012 and 15662 of 2012, submit that the house bill of lading issued by the freight forwarding agent endorsed by the bank would suffice and the consignment can be released by the freight forwarding agent on production of bank endorsed house bill and other shipping documents. The carrier can simply issue the master bill of lading against the consignment and inform the relevant parties about the particulars of the master bill of lading without bank endorsement which is known as telex release of the consignment.

8. They further submit that when a freight forwarding agent books a space for shipment of the consignment of the single importer abroad where a num-

ber of exporters are involved, then each exporter has to have two bills of lading endorsed by the banks/authorized dealer (AD) and the difficulties that are now being faced, in case of multiple exporters if all the shipment documents are not presented for delivery of the consignment at the destination part, the release of the entire consignment is held up.

9. Moreover, in respect of multi-shipment by several exporters to the same importer through one freight forwarding agent can be avoided if there is only one title document of the consignment, if only the house bill is treated as the title document for which the exporter and the agent would be fully responsible along with the carrier for the goods destination. The requirement to have the master bill of lading endorsed by the bank served no useful purpose and imposition of such a requirement violates the fundamental rights guaranteed under Article 40 of the Constitution of Peoples Republic of Bangladesh.

10. Finally, they submit that section 8(i) of Chapter 22 of the Guidelines for foreign exchange transaction issued by the Bangladesh Bank does not require two bills of lading and the present requirement of endorsing both the bills of lading by the authorized dealer, which is beyond its own guidelines for foreign exchange transaction and is contrary to the practice of the international trade and as such a declaration is necessary that it is not a mandatory requirement and the petitioner is not bound by it.

11. Mr. Shamim Khaled Ahmed, the learned Advocate appearing for the respondents in W.P. No. 6862 of 2011, Mr. Forrukh Rahman, the learned Advocate appearing for the respondents in W.P. No. 1322 of 2010, 7318 of 2010, 7316 of 2010, 7317 of 2010, 6240 of 2009, 7814 of 2012, 7831 of 2012, 7832 of 2012, 7833 of 2012, 7834 of 2012, 15367 of 2012, 15662 of 2012 and 15665 of 2012 submit that the circulation of two sets of bill of lading of which the further one (house bill of lading) is endorsed to the order of authorized dealer and the later one (Master Bill of Lading) is issued in favour of delivery agent not only violates the foreign exchange guideline but also creates confusion. There cannot be two bills of lading for same consignment for same mode of transport. This will encourage practice of fraud. Issuance of master bill of lading by carrier would make null and void any prior bill of lading. House bill received for shipment bill is applicable to transportation before shipment. For transportation by sea, the master bill of lading shall be applicable.

12. They also submit that the bill of lading/airway bill means shipped/on board bill of lading issued by carrier (ship-owner/airline), connotes a conclusive evidence of shipment. The freight forwarders cannot execute any contract of carriage by sea/air as they are not carrier for the purpose of

transport by sea/air. The guideline is issued within the power vested in Bangladesh bank under section 20(3) of FERA 1947. Guideline is issued for ship-owner/airline as carriers for sea or air leg of transport. FCR (Forwarder cargo receipt) or HAWB (house airway bill) only relates to land leg of transport, it cannot cover sea/air, hence cannot be negotiable beyond shipment for not being a title document after shipment.

13. They further submit that due to faulty export documents particularly bill of lading, the importers or its nominated bank often reject goods and/or after receiving goods refused to make payment and due to the same faulty documents, mostly bill of lading, the cargo as exported often are lost in transit. Allowing carrier to issue master bill of lading to the delivery agent of freight forwarder or to its order would actually put the freight forwarder in control of the cargo and also make it the lawful owner of the cargo. This would pave the way for committing fraud and also create confusion to the parties involved, as the bank would be holding house bill of lading at the same time believing that it is holding the true bill of lading. Hence two bills of lading cannot be in circulation at the same time. Issuance of separate master bill actually rescind the earlier bill for the same transport.

14. Moreover, the BGMEA informed the respondents that they received lots of complaints from its members against freight forwarders in that due to faulty export documents particularly bill of lading, importers refusal to make payment resulting in closure of many of the garments factory in Bangladesh. So, in order to protect the interest of the garments sector the master bill of lading has to be endorsed by the bank.

15. Finally, they submit that several news items have been published in several newspapers regarding the fraud and mal-practice committed by the freight forwarding agents and foreign buyers causing failure to receive payment and foreign remittance in Bangladesh.

The present writ petitions have been hotly contested and the learned Advocates on both the sides have debated the points raised therein at sufficient length.

The issues before us;

(a) whether a house bill of lading issued by a Freight Forwarding Agent is bill of lading.

(b) whether the provision with regard to the house bill of lading issued by the freight forwarding agent and the master bill of lading issued by the carrier has to be endorsed by the concerned bank/authorized dealer is beyond Section 8(i) of the Chapter 8 of the Guidelines for Foreign Exchange Transactions (GFET), 2009 (as of 31.05.2009).

16. Since the entire matter is relating to Bill of Lading, therefore, it is necessary to understand what Bill of Lading is.

Bill of lading is a document signed by a carrier (a transporter of goods) or the carrier's representative and issued to a consignor (the shipper of goods) that evidences the receipt of goods for shipment to a specified destination and person.

Carriers using all modes of transportation issue bills of lading when they undertake the transportation of cargo. A bill of lading is, in addition to a receipt for the delivery of goods, a contract for their carriage and a document of title to them. Its terms describe the freight for identification purposes; state the name of the consignor and the provisions of the contract for shipment; and direct the cargo to be delivered to the order or assigns of a particular person, the consignee, at a designated location.

BILL OF LADING is also a memorandum or acknowledgment in writing, signed by the captain or master of a ship or other vessel, that he has received in good order, on board of his ship or vessel, therein named, at the place therein mentioned, certain goods therein specified, which he promises to deliver in like good order, at the place therein appointed for the delivery of the same, to the consignee therein named or to his assigns, he or they paying freight for the same.

17. Bill of Lading (abbreviated to B/L) is one of the MOST important documents in the whole shipping and freight chain.

A bill of lading is the evidence of the contract of carriage entered into between the "carrier" and the "shipper or cargo owner" in order to carry out of the transportation of the cargo as per contract between the buyer and the seller.

A bill of lading is issued by the carrier or their agent to the shipper or the agent in exchange for receipt of the cargo. The issuance of the bill of lading proves that the carrier has received the goods from the shipper or their agent in apparent good order and condition, as handed over by the shipper.

18. Bills of lading originated as no more than documents issued to merchants by carriers to evidence receipt by the carriers, in good condition, of cargoes shipped on board their vessels. This receipt function remains a primary function of the "face" of most bills of lading (i.e. the side of the bill of lading in which information specific to particular cargos, such as description and weight or volume of bulk cargoes or the dimension number and seal numbers of containers in the case of containerized cargoes is entered, generally in numbered boxes.)

19. Scrutton on Charterparties and Bills of Lading, 19th Edition (1984) at para 2 describes a bill of lading as follows;

"After the goods are shipped, a document called a bill of lading is issued, which serves as a receipt by the ship-owner, acknowledging that the goods have been delivered to him for carriage..... the bill of lading serves also as;

1. *Evidence of the contract of affreightment between the shipper and the carrier,*

2. *A document of title, by the endorsement of which the property in the goods for which it is a receipt may be transferred, or the goods pledged or mortgaged as security for an advance.*

By statute, the rights and liabilities of the shipper under the contract of affreightment as set out in the bill of lading may be transferred with the full property in the goods to the consignee of the goods or the indorsee of the bill of lading. "

From the statement by the editors of the 19th edition of Scrutton (at 384);

"A house bill of lading issued by a forwarding agent acting solely in the capacity in the agent to arrange carriage is not a bill of lading at all, but at most a receipt for the goods coupled with an authority to enter into a contract of carriage on behalf of the shipper. It is not a document of title, nor within the Bills of Lading Act, 1855 and it is unlikely that it would ever be regarded as a good tender under a cif-contract."
[Emphasis added]

Therefore, a document is not a bill of lading merely because that is what the purpose called it.

Section 7 of the Article 1 of PART I of the **United Nations Convention on the Carriage of Goods by Sea ("Hamburg Rules") define what is bill of lading which runs thus:**

7. *"Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.*

20. *Section 2 of Article 14 of the* PART IV of the **United Nations Convention on the Carriage of Goods by Sea ("Hamburg Rules")** says that the bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

Under the UCP 600-Article 24 relates to bill of lading. A bill of lading, however named, must appeared to;

"a. A Road, rail or inland waterway transport document however named must appear to

i. indicate the name of the carrier and;

-be signed by the carrier or a named agent for or on behalf of the carrier, or

(underline by us)

-indicate receipt of the goods by signature, stamp or notation by the carrier or a named agent for or on behalf of the carrier.

Any signature, stamp or notation of receipt of the goods by the carrier or agent must be identified as that of the carrier or agent.

Any signature, stamp or notation of receipt of the goods by the agent must indicate that the agent has signed or acted for or on behalf of the carrier.

(underline by us)

21. *If a rail transport document does not identify the carrier, any signature or stamp of the railway company will be accepted as evidence of the document being signed by the carrier.*

ii. indicate the date of shipment or the date the goods have been received for shipment, dispatch or carriage at the place stated in the credit. Unless the transport document contains a dated reception stamp, an indication of the date of receipt or a date of shipment, the date of issuance of the transport document will be deemed to be the date of shipment.

iii. indicate the place of shipment and the place of destination stated in the credit.

b. i. A road transport document must appear to be the original for consignor or shipper or bear no making indicating for whom the document has been prepared.

ii. A rail transport document marked "duplicate " will be accepted as an original.

(iii) A rail or inland waterway transport document will be accepted as an original whether marked as an original or not.

c. In the absence of an indication on the transport document as to the number of originals issued, the number presented will be deemed to constitute a full set.

d. For the purpose of this article, transshipment means unloading from one means of conveyance and reloading to another means of conveyance, within the same mode of transport, during the carriage from the place of shipment, dispatch or carriage to the place of destination stated in the credit.

e.i. A road, rail or inland waterway transport document may indicate that the goods will or may be transshipped provided that the entire carriage is covered by one and the same transport document.

ii. A road, rail or inland waterway transport document indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment

22. On a plain reading of Article 24 of the UCP-600, it is abundantly clear that a house bill of lading is not a bill of lading.

23. According to sub- Article (b) of Article 1 the carriage of goods by Sea Act 1925 which says that the "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading (section 3 of the ARTICLE III of the SCHEDULE of the carriage of goods by Sea Act 1925)

24. The bill of lading can be treated as conclusive evidence as between the carrier and a receiver and as at least *prima facie* evidence as between the carrier and the shipper, as to the number weight or quantity and apparent order and condition of the cargo on loading (see Section 7 of the ARTICLE III of the SCHEDULE of the Carriage of Goods by Sea Act, 1925; Hague and Visby Rules, Article III, rule 4; the Hamburg Rules, Article 16(3).

After the goods are loaded, the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper. (Section 7 of the ARTICLE III of the SCHEDULE of the Carnage of Goods by Sea Act, 1925.)

25. Under The Hague– Visby rules carrier includes the owner or charterer who enters into a contract of carriage with a shipper [Article 1 (a)].

Under the Hamburg Rules carriers conclude a contract of carriage of goods by sea with a shipper. These Rules also cover actual carriers, which include any person entrusted by the carrier to perform all or part of the carriage of the goods.

"Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper (sub-Article (a) of the ARTICLE I of the SCHEDULE of the Carriage of Goods by Sea Act, 1925.)

According to sub- Article (a) of the ARTICLE I of the SCHEDULE of the Carriage of Goods by Sea Act, 1925 a freight forwarder is neither as owner nor as charterer of the vessel has any authority to issue any bill of lading.

26. In order to get delivery order from the carrier as well as for getting payment under the letter of credit, it

mandatorily requires presenting "ocean bill of lading/ master bill of lading and none else."

Freight Forwarder is an entity that secures the business of various exporters and importers and has the ability/facility to store, distribute their clients' cargoes in addition to negotiating freight rates on behalf of the clients, process all relevant customs, port and government documentation on behalf of their clients either directly or through 3rd party sources.

27. The general purpose of issuing a HBL is if the forwarder in question wants to control the cargo and not leave it under the direct control of the line, and also since there will be variation in freights between the HBL and MBL. But there is nothing stopping a forwarder from issuing a HBL using the EXACT same details as the MBL, but it's just that such an issuance would be superfluous. Not only superfluous, but it will then mean that there are two documents of title to the same shipment which cannot be the case.

28. Freight Forwarder taking more responsibility than required or permitted by law. Certainly violates Freight Forwarding Agents (Licensing and Administration) Rules 2008 and Guideline for Foreign Exchange Transactions (GFET), 2009. (as of 31 .05.2009).

Therefore, a house bill of lading issued by a forwarding agent acting solely in the capacity of the agent to arrange carriage is not a bill of lading at all, but at the most a receipt for the goods coupled with an authority to enter into a contract of carriage on behalf of the shipper. It is not a document of title, nor within the Bills of Lading Act, 1855 and it is unlikely that it would ever be regarded as a good tender under a cif-contract.

Section 8 of the Chapter 8 of the Guidelines for Foreign Exchange Transactions (GFET), 2009(as of 31.05.2009) is only for carriers. Section 8 clearly says that;

"8. In exercise of powers vested in the Bangladesh Bank under section 20(3) of the FER Act, ***all carriers*** *whether common or private (Railway, Shipping or Airline companies) and their agents are directed as under:*

(i) .....

(ii) .....".

29. *Since, admittedly the petitioners are not carriers; therefore, this section has no manner of application to them.*

It is a well settled principle of law that in order to get a Rule of mandamus the petitioners must show that their claim is rooted in the statute or statutory Rule.

So, it has always required that the applicant for a mandamus should have a legal specific right to enforce the performance of those duties.

In the case of Queen v. Guardians of the Lewisham Union, reported in (1897) 1 QB 498 it was observed;

"This court would be far exceeding its proper functions if it were to assume jurisdiction to enforce the performance by public bodies of all their statutory duties without requiring clear evidence that the person who sought its interference had a legal right to insist upon such performance."

30. *In the case of Talekhal Progressive Fisherman Co-operative Society Ltd. Vs. Bangladesh and others reported in 1981 BLD (AD) 103 wherein it has been observed:*

"In order to entitle a person to ask for performance of any public duty by mandamus it is necessary to show that he has a legal right for claiming such performance part from the fact that he is interested in the performance of the duty."

The case of National Engineers vs. Ministry of Defence reported in 44 DLR (AD) (1992) 179 our Apex Court held thus:

"In order to enforce the performance by public bodies of any public duty by mandamus, the applicant must have a specific legal right to insist upon such performance ".

A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the public bodies and there is a failure on the part of those public bodies to discharge their statutory obligations. The paramount function of a writ is to compel performance of public duties prescribed by statute and to keep public bodies exercising public functions within the limits of their jurisdiction. Therefore, mandamus may issue to compel the public bodies to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

31. In the cases in hand, the petitioners have completely failed to show us any legal right under the statute to enforce its performance rather their claims are amorphous fallacious and absolutely based on erroneous notion and as such instant writ petitions are not maintainable in law.

In the result, the Rules are discharged without any order as to cost.

Communicate the judgment and order at once.

Cases cited:

* ***Queen Vs. Guardians of the Lewisham Union, (1897) 1 QB 498.***
* ***Talekhal Progressive Fisherman Co-operative Society Ltd. Vs. Bangladesh and others, 1981 BLD (AD) 103.***
* ***National Engineers Vs. Ministry of Defence, 44 DLR (AD) (1992) 179.***

বাংলাদেশ জাতীয় সংসদ

ঢাকা, ০৯ অক্টোবর, ২০১৩/২৪ আশ্বিন, ১৪২০

সংসদ কর্তৃক গৃহীত নিম্নলিখিত আইনটি ০৯ অক্টোবর, ২০১৩ (২৪ আশ্বিন, ১৪২০) তারিখে রাষ্ট্রপতির সম্মতি লাভ করিয়াছে এবং এতদ্বারা এই আইনটি সর্বসাধারণের অবগতির জন্য প্রকাশ করা যাইতেছেঃ–

২০১৩ সনের ৪০ নং আইন
জাতীয় পরিচয় নিবন্ধন আইন, ২০১০ এর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে জাতীয় পরিচয় নিবন্ধন আইন, ২০১০ (২০১০ সনের ৩ নং আইন) এর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্‌দ্বারা নিম্নরূপ আইন করা হইলঃ–

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।– (১) এই আইন **জাতীয় পরিচয় নিবন্ধন (সংশোধন) আইন, ২০১৩** নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। ২০১০ সনের ৩ নং আইনের ধারা ৫ এর প্রতিস্থাপন।– জাতীয় পরিচয় নিবন্ধন আইন, ২০১০ (২০১০ সনের ৩ নং আইন), অতঃপর উক্ত আইন বলিয়া উল্লিখিত, এর ধারা ৫ এর পরিবর্তে নিম্নরূপ ধারা ৫ প্রতিস্থাপিত হইবে, যথাঃ–

"**৫। জাতীয় পরিচয়পত্র পাইবার অধিকার, ইত্যাদি।**– (১) ভোটার তালিকা আইন, ২০০৯ (২০০৯ সনের ৬ নং আইন) অনুসারে ভোটার হিসাবে তালিকাভুক্ত প্রত্যেক নাগরিক, নির্ধারিত পদ্ধতি ও শর্ত সাপেক্ষে, জাতীয় পরিচয়পত্র পাইবার অধিকারী হইবেন।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, কমিশন অন্যান্য নাগরিককে, নির্ধারিত পদ্ধতি ও শর্ত সাপেক্ষে, জাতীয় পরিচয়পত্র প্রদান করিতে পারিবে।"।

৩। ২০১০ সনের ৩ নং আইনের ধারা ৭ এর সংশোধন।– উক্ত আইনের ধারা ৭ এর–

(ক) উপান্তটীকায় উল্লিখিত "পুনঃনিবন্ধন" শব্দের পরিবর্তে "নবায়ন" শব্দ প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (২) এর পরিবর্তে নিম্নরূপ উপ-ধারা (২) প্রতিস্থাপিত হইবে, যথাঃ–

"(২) জাতীয় পরিচয়পত্রের মেয়াদ উত্তীর্ণ হইবার পূর্বে বা পরে উহা নবায়নের জন্য প্রত্যেক নাগরিককে নির্ধারিত পদ্ধতি ও ফি প্রদান সাপেক্ষে কমিশনের নিকট আবেদন করিতে হইবে।";

(গ) উপ-ধারা (৩) এ উল্লিখিত "পুনঃনিবন্ধন" শব্দের পরিবর্তে "নবায়ন" শব্দ প্রতিস্থাপিত হইবে।

৪। ২০১০ সনের ৩ নং আইনের ধারা ৮ এর সংশোধন।– উক্ত আইনের ধারা ৮ এর দফা (খ) এ উল্লিখিত "পরিচয়পত্রে" শব্দের পরিবর্তে "পরিচয়পত্র বা তথ্য-উপাত্তে" শব্দগুলি প্রতিস্থাপিত হইবে।

৫। ২০১০ সনের ৩ নং আইনের ধারা ১৩ এর প্রতিস্থাপন।– উক্ত আইনের ধারা ১৩ এর পরিবর্তে নিম্নরূপ ধারা ১৩ প্রতিস্থাপিত হইবে, যথাঃ–

"**১৩। তথ্য-উপাত্ত সংরক্ষণ, গোপনীয়তা ও সরবরাহ, ইত্যাদি।**– (১) কমিশন তথ্য প্রযুক্তির মাধ্যমে তথ্য-উপাত্ত সংরক্ষণ করিবে।

(২) কমিশনের নিকট সংরক্ষিত তথ্য-উপাত্ত গোপনীয় বলিয়া বিবেচিত হইবে।

(৩) উপ-ধারা (২) এ যাহা কিছুই থাকুক না কেন, নির্ধারিত পদ্ধতি ও শর্তে কোন ব্যক্তি বা প্রতিষ্ঠান কমিশনের নিকট সংরক্ষিত তথ্য-উপাত্ত পাইবার জন্য আবেদন করিতে পারিবে এবং কমিশন উক্তরূপ চাহিত তথ্য-উপাত্ত, ভিন্নরূপ বিবেচিত না হইলে, সংশ্লিষ্ট ব্যক্তি বা প্রতিষ্ঠানকে সরবরাহ করিবে।"।

৬। ২০১০ সনের ৩ নং আইনে নূতন ধারা ১৩ক এর সন্নিবেশ।– উক্ত আইনের ধারা ১৩ এর পর নিম্নরূপ নূতন ধারা ১৩ক সন্নিবেশিত হইবে, যথাঃ–

"**১৩ক। তথ্য যাচাই।**– কোন ব্যক্তি নির্ধারিত পদ্ধতি ও সার্ভিস চার্জের বিনিময়ে তথ্য-উপাত্তে সংরক্ষিত তথ্যের সঠিকতা যাচাই করিবার জন্য কমিশনের নিকট আবেদন করিতে পারিবে।"।

৭। ২০১০ সনের ৩ নং আইনে নূতন ধারা ১৬ক এর সন্নিবেশ।– উক্ত আইনের ধারা ১৬ এর পর নিম্নরূপ নূতন ধারা ১৬ক সন্নিবেশিত হইবে, যথাঃ–

"**১৬ক। তথ্য-উপাত্তে অননুমোদিত প্রবেশ বা উহাদের বেআইনী ব্যবহারের দণ্ড।**– কোন ব্যক্তি তথ্য-উপাত্তে অননুমোদিতভাবে প্রবেশ করিলে বা বেআইনীভাবে তথ্য-উপাত্ত ব্যবহার করিলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে

এবং উক্তরূপ অপরাধের জন্য তিনি অনূর্ধ্ব পাঁচ বৎসর কারাদণ্ড বা অনধিক পঞ্চাশ হাজার টাকা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডনীয় হইবেন।"।

৮। ২০১০ সনের ৩ নং আইনে নূতন ধারা ১৭ক এর সন্নিবেশ।– উক্ত আইনের ধারা ১৭ এর পর নিম্নরূপ নূতন ধারা ১৭ক সন্নিবেশিত হইবে, যথাঃ–

"**১৭ক। তথ্য-উপাত্তের অননুমোদিত প্রকাশ।**– কমিশনের কোন সদস্য, কর্মকর্তা, কর্মচারী বা উহার প্রতিনিধি অননুমোদিতভাবে তথ্য-উপাত্ত কোন ব্যক্তির নিকট প্রকাশ করিলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্তরূপ অপরাধের জন্য তিনি অনূর্ধ্ব পাঁচ বৎসর কারাদণ্ড বা অনধিক পঞ্চাশ হাজার টাকা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডনীয় হইবেন।"।

প্রণব চক্রবর্তী
অতিরিক্ত সচিব।

বাংলাদেশ জাতীয় সংসদ

ঢাকা, ০৯ অক্টোবর, ২০১৩/২৪ আশ্বিন, ১৪২০

সংসদ কর্তৃক গৃহীত নিম্নলিখিত আইনটি ০৯ অক্টোবর, ২০১৩ (২৪ আশ্বিন, ১৪২০) তারিখে রাষ্ট্রপতির সম্মতি লাভ করিয়াছে এবং এতদ্বারা এই আইনটি সর্বসাধারণের অবগতির জন্য প্রকাশ করা যাইতেছেঃ–

২০১৩ সনের ৪১ নং আইন
ভোটার তালিকা আইন, ২০০৯ এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে ভোটার তালিকা আইন, ২০০৯ (২০০৯ সনের ৬নং আইন) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইলঃ–

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।– (১) এই আইন **ভোটার তালিকা (দ্বিতীয় সংশোধন) আইন, ২০১৩** নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। ২০০৯ সনের ৬নং আইনের ধারা ৩ এর সংশোধন।– ভোটার তালিকা আইন, ২০০৯ (২০০৯ সনের ৬নং আইন), অতঃপর উক্ত আইন বলিয়া উল্লিখিত, এর ধারা ৩ এর দফা (চ) এর পরিবর্তে নিম্নরূপ দফা (চ) প্রতিস্থাপিত হইবে, যথাঃ–

"(চ) **"ভোটার এলাকা"** অর্থ পল্লী এলাকার ক্ষেত্রে এক বা একাধিক গ্রাম বা গ্রামের অংশ বিশেষ এবং শহর এলাকার ক্ষেত্রে এক বা একাধিক মহল্লা বা রাস্তা অথবা মহল্লা বা রাস্তার অংশ বিশেষ;"।

৩। ২০০৯ সনের ৬নং আইনের ধারা ৭ এর সংশোধন।– উক্ত আইনের ধারা ৭ এর উপ-ধারা (১) এর–

(ক) দফা (গ) এর প্রান্তস্থিত "এবং" শব্দ বিলুপ্ত হইবে;

(খ) দফা (ঘ) এর প্রান্তস্থিত দাঁড়ির পরিবর্তে সেমিকোলন প্রতিস্থাপিত হইবে এবং অতঃপর নিম্নরূপ নূতন দফা (ঙ) ও (চ) সংযোজিত হইবে, যথাঃ–

"(ঙ) Bangladesh Collaborators (Special Tribunals) Order, 1972 (P.O. No. 8 of 1972) এর অধীন কোন অপরাধে দণ্ডিত না হইয়া থাকেন; এবং

(চ) International Crimes (Tribunals) Act, 1973 (Act No. XIX of 1973) এর অধীন কোন অপরাধে দণ্ডিত না হইয়া থাকেন।"।

৪। ২০০৯ সনের ৬নং আইনের ধারা ১৩ এর প্রতিস্থাপন।– উক্ত আইনের ধারা ১৩ এর পরিবর্তে নিম্নরূপ ধারা ১৩ প্রতিস্থাপিত হইবে, যথাঃ–

"**১৩। ভোটার তালিকা হইতে নাম কর্তন।**– নিম্নবর্ণিত যে কোন কারণে ভোটার তালিকাভুক্ত কোন ব্যক্তির নাম ভোটার তালিকা হইতে কর্তন করিতে হইবে, যথাঃ–

(ক) বাংলাদেশের নাগরিক না থাকিলে;

(খ) কোন উপযুক্ত আদালত কর্তৃক অপ্রকৃতিস্থ বলিয়া ঘোষিত হইলে;

(গ) Bangladesh Collaborators (Special Tribunals) Order, 1972 (P.O. No. 8 of 1972) এর অধীন কোন অপরাধে দণ্ডিত হইলে; অথবা

(ঘ) International Crimes (Tribunals) Act, 1973 (Act No. XIX of 1973) এর অধীন কোন অপরাধে দণ্ডিত হইলে।"।

প্রণব চক্রবর্তী
অতিরিক্ত সচিব।

বাংলাদেশ জাতীয় সংসদ

ঢাকা, ০৯ অক্টোবর, ২০১৩/২৪ আশ্বিন, ১৪২০

সংসদ কর্তৃক গৃহীত নিম্নলিখিত আইনটি ০৯ অক্টোবর, ২০১৩ (২৪ আশ্বিন, ১৪২০) তারিখে রাষ্ট্রপতির সম্মতি লাভ করিয়াছে এবং এতদ্বারা এই আইনটি সর্বসাধারণের অবগতির জন্য প্রকাশ করা যাইতেছেঃ–

২০১৩ সনের ৪২নং আইন
তথ্য ও যোগাযোগ প্রযুক্তি আইন, ২০০৬ এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে, তথ্য ও যোগাযোগ প্রযুক্তি আইন, ২০০৬ (২০০৬ সনের ৩৯ নং আইন) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইলঃ–

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।– (১) এই আইন **তথ্য ও যোগাযোগ প্রযুক্তি (সংশোধন) আইন, ২০১৩** নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। ২০০৬ সনের ৩৯ নং আইনের ধারা ৫৪ এর সংশোধন।– তথ্য ও যোগাযোগ প্রযুক্তি আইন, ২০০৬ (২০০৬ সনের ৩৯ নং আইন), অতঃপর উক্ত আইন বলিয়া উল্লিখিত, এর ধারা ৫৪ এর উপ-ধারা (২) এর "অনধিক দশ বৎসর কারাদণ্ডে" শব্দগুলির পরিবর্তে "অনধিক চৌদ্দ বৎসর এবং অন্যূন সাত বৎসর কারাদণ্ডে" শব্দগুলি প্রতিস্থাপিত হইবে।

৩। ২০০৬ সনের ৩৯ নং আইনের ধারা ৫৬ এর সংশোধন।– উক্ত আইনের ধারা ৫৬ এর উপ-ধারা (২) এর "অনধিক দশ বৎসর কারাদণ্ডে" শব্দগুলির পরিবর্তে "অনধিক চৌদ্দ বৎসর এবং অন্যূন সাত বৎসর কারাদণ্ডে" শব্দগুলি প্রতিস্থাপিত হইবে।

৪। ২০০৬ সনের ৩৯ নং আইনের ধারা ৫৭ এর সংশোধন।– উক্ত আইনের ধারা ৫৭ এর উপ-ধারা (২) এর "অনধিক দশ বৎসর কারাদণ্ডে" শব্দগুলির পরিবর্তে "অনধিক চৌদ্দ বৎসর এবং অন্যূন সাত বৎসর কারাদণ্ডে" শব্দগুলি প্রতিস্থাপিত হইবে।

৫। ২০০৬ সনের ৩৯ নং আইনের ধারা ৬১ এর সংশোধন।– উক্ত আইনের ধারা ৬১ এর উপ-ধারা (২) এর "অনধিক দশ বৎসর কারাদণ্ডে" শব্দগুলির পরিবর্তে "অনধিক চৌদ্দ বৎসর এবং অন্যূন সাত বৎসর কারাদণ্ডে" শব্দগুলি প্রতিস্থাপিত হইবে।

৬। ২০০৬ সনের ৩৯ নং আইনের ধারা ৬৯ এর সংশোধন।– উক্ত আইনের ধারা ৬৯ এর উপ-ধারা (১) এর "এবং" শব্দের পরিবর্তে "অথবা" শব্দ প্রতিস্থাপিত হইবে।

৭। ২০০৬ সনের ৩৯ নং আইনের ধারা ৭৫ এর সংশোধন।– উক্ত আইনের ধারা ৭৫ এর উপ-ধারা (২) এর "এবং" শব্দের পরিবর্তে "অথবা" শব্দ প্রতিস্থাপিত হইবে।

৮। ২০০৬ সনের ৩৯ নং আইনের ধারা ৭৬ এর সংশোধন।– উক্ত আইনের ধারা ৭৬ এর–

(ক) উপ-ধারা (১) এর পর নিম্নরূপ উপ-ধারা (১ক) ও (১খ) সন্নিবেশিত হইবে, যথাঃ–

"(১ক) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, নিয়ন্ত্রক বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বা উক্ত উপ-ধারায় উল্লিখিত কোন পুলিশ কর্মকর্তা কর্তৃক এই আইনের অধীন কোন অপরাধ একই সাথে তদন্ত করা যাইবে না।

(১খ) কোন মামলার তদন্তের যে কোন পর্যায়ে যদি প্রতীয়মান হয় যে, উক্ত মামলার সুষ্ঠু তদন্তের স্বার্থে, তদন্ত পরিচালনার দায়িত্ব–

(ক) পুলিশ কর্মকর্তার নিকট হইতে নিয়ন্ত্রক বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তা, বা

(খ) নিয়ন্ত্রক বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তার নিকট হইতে পুলিশ কর্মকর্তার, নিকট হস্তান্তর করা প্রয়োজন, তাহা হইলে সরকার বা, ক্ষেত্রমত, সাইবার ট্রাইব্যুনাল, আদেশ দ্বারা, পুলিশ কর্মকর্তার নিকট হইতে নিয়ন্ত্রক বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তার নিকট অথবা নিয়ন্ত্রক বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তার নিকট হইতে পুলিশ কর্মকর্তার নিকট হস্তান্ত র করিতে পারিবে।"।

(খ) উপ-ধারা (২) এর পরিবর্তে নিম্নরূপ উপ-ধারা (২) প্রতিস্থাপিত হইবে, যথাঃ–

"(২) ধারা–

(ক) ৫৪, ৫৬, ৫৭, ও ৬১ এ উল্লিখিত অপরাধসমূহ আমলযোগ্য (Cognizable) ও অ-জামিনযোগ্য হইবে; এবং

(খ) ৫৫, ৫৮, ৫৯, ৬০, ৬২, ৬৩, ৬৪ ও ৬৫ এ উল্লিখিত অপরাধসমূহ অ-আমলযোগ্য (non-cognizable) ও জামিনযোগ্য হইবে।"।

৯। ২০০৬ সনের ৩৯ নং আইনের ধারা ৮০ এর সংশোধন।– উক্ত আইনের ধারা ৮০ এর–

(ক) উপান্তটীকার "প্রকাশ্য স্থান, ইত্যাদিতে" শব্দগুলি ও কমা বিলুপ্ত হইবে; এবং

(খ) "প্রকাশ্য" শব্দটি বিলুপ্ত হইবে।

১০। রহিতকরণ ও হেফাজত।– (১) তথ্য ও যোগাযোগ প্রযুক্তি (সংশোধন) অধ্যাদেশ, ২০১৩ (২০১৩ সনের ৪ নং অধ্যাদেশ) এতদ্দ্বারা রহিত করা হইল।

(২) উপ-ধারা (১) এর অধীন রহিতকরণ সত্ত্বেও উক্ত অধ্যাদেশের অধীন কৃত সকল কাজ কর্ম এবং গৃহীত ব্যবস্থা এই আইনের অধীন কৃত বা গৃহীত হইয়াছে বলিয়া গণ্য হইবে।

প্রণব চক্রবর্তী
অতিরিক্ত সচিব।

বাংলাদেশ জাতীয় সংসদ

ঢাকা, ১০ অক্টোবর, ২০১৩/২৫ আশ্বিন, ১৪২০

সংসদ কর্তৃক গৃহীত নিম্নলিখিত আইনটি ১০ অক্টোবর, ২০১৩ (২৫ আশ্বিন, ১৪২০) তারিখে রাষ্ট্রপতির সম্মতি লাভ করিয়াছে এবং এতদ্বারা এই আইনটি সর্বসাধারণের অবগতির জন্য প্রকাশ করা যাইতেছেঃ–

২০১৩ সনের ৪৩নং আইন

বিজ্ঞানসম্মত পদ্ধতির যথাযথ অনুশীলনের মাধ্যমে নিরাপদ খাদ্য প্রাপ্তির অধিকার নিশ্চিতকরণে খাদ্য উৎপাদন, আমদানি, প্রক্রিয়াকরণ, মজুদ, সরবরাহ, বিপণন ও বিক্রয় সংশ্লিষ্ট কার্যক্রম সমন্বয়ের মাধ্যমে নিয়ন্ত্রণ এবং তদ্‌লক্ষ্যে একটি দক্ষ ও কার্যকর কর্তৃপক্ষ প্রতিষ্ঠার উদ্দেশ্যে এতদ্‌সংক্রান্ত বিদ্যমান আইন রহিতক্রমে উহা পুনঃপ্রণয়নের উদ্দেশ্যে প্রণীত আইন

যেহেতু মানুষের জীবন ও স্বাস্থ্য সুরক্ষার জন্য নিরাপদ খাদ্য প্রাপ্তির অধিকার নিশ্চিত করা আবশ্যক; এবং

যেহেতু বিজ্ঞানসম্মত পদ্ধতির যথাযথ অনুশীলনের মাধ্যমে নিরাপদ খাদ্য প্রাপ্তির অধিকার নিশ্চিতকরণে খাদ্য উৎপাদন, আমদানি, প্রক্রিয়াকরণ, মজুদ, সরবরাহ, বিপণন ও বিক্রয় সংশ্লিষ্ট কার্যক্রম সমন্বয়ের মাধ্যমে নিয়ন্ত্রণ এবং তদ্‌লক্ষ্যে একটি দক্ষ ও কার্যকর কর্তৃপক্ষ প্রতিষ্ঠার উদ্দেশ্যে এতদ্‌সংক্রান্ত বিদ্যমান আইন রহিতক্রমে উহা পুনঃপ্রণয়নের লক্ষ্যে বিধান করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইল–

প্রথম অধ্যায়

প্রারম্ভিক

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।– (১) এই আইন **নিরাপদ খাদ্য আইন, ২০১৩** নামে অভিহিত হইবে।

(২) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যে তারিখ নির্ধারণ করিবে, সেই তারিখে ইহা কার্যকর হইবে।

২। সংজ্ঞা।– বিষয় বা প্রসঙ্গের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে–

(১) **"কর্তৃপক্ষ"** অর্থ ধারা ৫ এর অধীন প্রতিষ্ঠিত বাংলাদেশ নিরাপদ খাদ্য কর্তৃপক্ষ;

(২) **"কীটনাশক বা বালাইনাশকের অবশিষ্টাংশ"** অর্থ উৎপাদন, আমদানি, প্রক্রিয়াকরণ, মজুদ, সরবরাহ, বিক্রয় বা বিপণনের যে কোন পর্যায়ে, কীটনাশক বা বালাইনাশক ব্যবহারের ফলে, খাদ্য বস্তুতে উপস্থিত কোন বিশেষ বস্তু বা উদ্ভূত কোন অবস্থা, যাহাতে কীটনাশক বা বালাইনাশকের মূল উপাদান, সহযোগী অংশ, রূপান্তরিত উৎপন্ন দ্রব্য, বিপাক বা শোষণকৃত (metabolites) অবশিষ্টাংশ, বিক্রিয়ার মাধ্যমে উৎপাদিত বস্তু বা সৃষ্ট দূষিত বস্তুসহ এইরূপ কোন বস্তু বিদ্যমান থাকে ও যাহাদের উপস্থিতিতে খাদ্যদ্রব্যে মারাত্মক বিষক্রিয়া সংঘটিত হয় বলিয়া বিবেচিত হয়; এবং কোন খাদ্যদ্রব্যে পরিবেশ হইতে সংক্রামিত অবশিষ্টাংশও ইহার অন্তর্ভূক্ত হইবে; এবং

(৩) **"খাদ্য"** অর্থ চর্ব্য, চূষ্য, লেহ্য (যেমন-খাদ্যশস্য, ডাল, মৎস্য, মাংস, দুগ্ধ, ডিম, ভোজ্য-তৈল, ফলমূল, শাকসব্জি, ইত্যাদি) বা পেয় (যেমন- সাধারণ পানি, বায়ুবায়িত পানি, অঙ্গারায়িত পানি, এনার্জি-ড্রিংক, ইত্যাদি)-সহ সকল প্রকার প্রক্রিয়াজাত, আংশিক-প্রক্রিয়াজাত বা অপ্রক্রিয়াজাত আহার্য উৎপাদন এবং খাদ্য, প্রক্রিয়াকরণ বা প্রস্তুতকরণে ব্যবহৃত উপকরণ বা কাঁচামালও, যাহা মানবদেহের জন্য উপকারী আহার্য হিসাবে জীবন ধারণ, পুষ্টি সাধন ও স্বাস্থ্য-রক্ষা করিতে ব্যবহৃত হইয়া থাকে, উহার অন্তর্ভূক্ত হইবে;

ব্যাখ্যা–

(ক) আহার্য প্রস্তুতকরণে ব্যবহৃত রঞ্জক, সুগন্ধি, মশলা, সংযোজন-দ্রব্য, সংরক্ষণ-দ্রব্য, এন্টি-অক্সিডেন্ট, যাহা মূল আহার্য নহে কিন্তু খাদ্য উৎপাদন, সংরক্ষণ বা প্রস্তুতকরণে ব্যবহৃত হইয়া থাকে, খাদ্যের অন্তর্ভূক্ত হইবে;

(খ) সরকার কর্তৃক, সময় সময়, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা খাদ্য বলিয়া ঘোষিত দ্রব্যাদি, এই আইনের উদ্দেশ্য পূরণকল্পে, খাদ্যের অন্তর্ভূক্ত হইবে;

তবে ঔষধ, ভেষজ, মাদক ও সৌন্দর্য সামগ্রী, ইত্যাদি খাদ্যের অন্তর্ভূক্ত হইবে না।

(৪) **"খাদ্য আদালত"** অর্থ ধারা ৬৪ এর অধীন নির্ধারিত বিশুদ্ধ খাদ্য আদালত;

(৫) **"খাদ্য উৎপাদন"** অর্থ যে কোন খাদ্যের উপাদানকে খাদ্যদ্রব্যে পরিবর্তন করিবার প্রক্রিয়া, যাহার সহিত অন্যান্য প্রক্রিয়াও অঙ্গীভূত থাকিতে পারে;

(৬) **"খাদ্য পরীক্ষাগার"** অর্থ কোন আইনের অধীন প্রতিষ্ঠিত বা সরকার কর্তৃক স্বীকৃত কোন খাদ্য পরীক্ষাগার বা প্রতিষ্ঠান, যে নামেই অভিহিত হউক না কেন;

(৭) **"খাদ্য বিশ্লেষক"** অর্থ ধারা ৪৫ এর উপ-ধারা (১) এর অধীন নিযুক্ত কোন খাদ্য বিশ্লেষক এবং উপ-ধারা (২) এর অধীন খাদ্য বিশ্লেষকের দায়িত্বপালনকারী ব্যক্তিও উহার অন্তর্ভূক্ত হইবে;

(৮) **"খাদ্য ব্যবসা"** অর্থ খাদ্য উৎপাদন, প্রক্রিয়াকরণ, প্যাকেজিং, গুদামজাতকরণ, পরিবহন, আমদানি, বিতরণ বা বিক্রয় সংশ্লিষ্ট কর্মকাণ্ড এবং মজুদ, যোগান, সরবরাহ ও সেবাসহ খাদ্যদ্রব্য প্রস্তুতকরণ অথবা খাদ্যের উপাদান বিক্রয় সংশ্লিষ্ট কার্যক্রমও ইহার অন্তর্ভূক্ত হইবে;

(৯) **"খাদ্য ব্যবসায়ী"** অর্থ যে ব্যক্তি বা প্রতিষ্ঠান আপাততঃ বলবৎ কোন আইনের অধীন বা প্রবিধান অনুযায়ী খাদ্য ব্যবসা পরিচালনা করেন এবং যিনি উক্ত ব্যবসার প্রতি দায়িত্বশীল বা উক্ত ব্যবসার সত্ত্বাধিকারী;

(১০) **"খাদ্য সংযোজন দ্রব্য"** অর্থ বিশেষ উদ্দেশ্যে খাদ্যের সহিত প্রবিধান দ্বারা নির্ধারিত মাত্রার সংযোজিত যে কোন বস্তু, যাহা সাধারণত মূল আহার্য হিসাবে ভক্ষণ করা হয় না, তবে বৈশিষ্ট্যসূচক উপাদান হিসাবে কারিগরী প্রয়োজনে খাদ্য প্রক্রিয়াকরণ, প্রস্তুতকরণ, মোড়কজাতকরণ, সংরক্ষণের মাধ্যমে, প্রত্যক্ষ বা পরোক্ষভাবে, প্রত্যাশিত উপযোগিতা প্রাপ্তির জন্য খাদ্যে ব্যবহৃত হয় এবং দূষক বা অন্য কোন মিশ্রিত পদার্থের অন্তর্ভূক্তি ব্যতিরেকেই খাদ্যের গুণগত মান অক্ষুণ্ন রাখিবার জন্য মূল খাদ্যের বৈশিষ্ট্যকে প্রভাবিত করে;

(১১) **"খাদ্য-স্থাপনা"** অর্থ খাদ্যদ্রব্য বা খাদ্যোপকরণ উৎপাদন, প্রক্রিয়াকরণ, আমদানি, সরবরাহ, মজুদ, বিতরণ বা বিক্রয়ের সহিত সংশ্লিষ্ট ব্যক্তি বা প্রতিষ্ঠানের ভূমি, দালানকোঠা, যানবাহন, ভ্যান, তাবু অথবা উন্মুক্ত, আবৃত বা দেওয়ালঘেরা কোন জায়গা অথবা যে কোন ধরনের অবকাঠামো এবং জলপ্রবাহ, হ্রদ, সমুদ্রতীর, নালানর্দমা, খানা-খন্দক, নদী, পোতাশ্রয় বা অন্য কোন জলাশয়ের উপর অবস্থিত অবকাঠামোও উহার অন্তর্ভূক্ত হইবে;

(১২) **"চেয়ারম্যান"** অর্থ কর্তৃপক্ষের চেয়ারম্যান;

(১৩) **"দণ্ডবিধি"** অর্থ Penal Code (Act. No. XLV of 1860);

(১৪) **"দূষক"** অর্থ এইরূপ কোন বস্তু যাহা, খাদ্যদ্রব্যে যোগ করা হউক বা না হউক, খাদ্যদ্রব্য উৎপাদন, প্রক্রিয়াকরণ, প্রস্তুতকরণ, মোড়কাবদ্ধকরণ, পরিবহন, মজুদ অথবা পরিবেশ-দূষণ বা অন্য কোন কারণে খাদ্যে উপস্থিত থাকিতে পারে, তবে পোকামাকড়ের অংশবিশেষ, চুল, লোম বা অন্য কোন বহিঃস্থ পদার্থ ইহার অন্তর্ভূক্ত হইবে না;

(১৫) **"ধারণপাত্র"** অর্থ ইতোপূর্বে ব্যবহৃত হইয়াছে এইরূপ কোন স্বাস্থ্য হানিকর পাত্র হইতে প্রস্তুত নয়, এইরূপ কোন আধার বা মোড়ক, যাহা ধূলাবালি, অননুমোদিত মাত্রার জৈব বা রাসায়নিক দূষক, আর্সেনিক, পারদ বা স্বাস্থ্য হানিকর ভারী-ধাতু হইতে মুক্ত;

(১৬) **"নকল খাদ্য"** অর্থ বিক্রয়ের জন্য অনুমোদিত কোন খাদ্যদ্রব্য বা খাদ্যোপকরণের অনুকরণে অননুমোদিতভাবে অনুরূপ খাদ্য উৎপাদন, আমদানি, প্রস্তুত বা লেবেলিং করা, যাহার মধ্যে অনুমোদিত খাদ্যের উপাদান, উপকরণ, বিশুদ্ধতা ও গুণগত মান বিদ্যমান থাকুক বা না থাকুক;

(১৭) **"নিরাপদ খাদ্য"** অর্থ প্রত্যাশিত ব্যবহার ও উপযোগিতা অনুযায়ী মানুষের জন্য বিশুদ্ধ ও স্বাস্থ্যসম্মত আহার্য;

(১৮) **"নিরাপদ খাদ্য বিরোধী কার্য"** অর্থ পঞ্চম অধ্যায়ে উল্লিখিত খাদ্য ব্যবসা পরিচালনায় বিধি-নিষেধ লংঘনজনিত কোন কার্য;

(১৯) **"নির্ধারিত"** অর্থ বিধি দ্বারা নির্ধারিত এবং, বিধি প্রণীত না হওয়া পর্যন্ত, সরকারের অনুমোদনক্রমে, কর্তৃপক্ষ কর্তৃক লিখিত আদেশ দ্বারা নির্ধারিত;

(২০) **"পরিদর্শক"** অর্থ ধারা ৫১ এর উপ-ধারা (১) এর অধীন নিযুক্ত কোন নিরাপদ খাদ্য পরিদর্শক এবং উপ-ধারা (২) এর অধীন নিরাপদ খাদ্য পরিদর্শকের দায়িত্বপালনকারী ব্যক্তিও উহার অন্তর্ভূক্ত হইবে;

(২১) **"পশু বা মৎস্য-রোগের ঔষধের অবশিষ্টাংশ"** অর্থ পশু বা মৎস্য-রোগের ঔষধে ব্যবহৃত মূল যৌগ বা তাহার বিপাক বা শোষণকৃত-বস্তু, যাহা কোন প্রাণীজ উৎস হইতে প্রাপ্ত খাদ্যদ্রব্যের ভোজ্য অংশে বা পশু বা মৎস্য খাদ্যের উপকরণের মধ্যে উপস্থিত ঔষধের অবশিষ্টাংশ এবং সহযোগী দূষণকারী দ্রব্যাদি (impurities) থাকিলে উহাও অন্তর্ভূক্ত হইবে;

(২২) **"পরিষদ"** অর্থ ধারা ৪ এর অধীন প্রতিষ্ঠিত জাতীয় নিরাপদ খাদ্য ব্যবস্থাপনা উপদেষ্টা পরিষদ;

(২৩) **"প্রক্রিয়াকরণ-সহায়ক দ্রব্য"** অর্থ যন্ত্রপাতি ও গৃহ-সরঞ্জাম ব্যতীত অন্য যে কোন পদার্থ বা বস্তু, যাহা খাদ্য হিসাবে সরাসরি ভক্ষণ করা হয় না, তবে খাদ্যোপকরণ হিসাবে বিশেষ কারিগরি প্রয়োজনে কোন শোধন অথবা প্রক্রিয়াকরণের স্বার্থে ব্যবহৃত হয় বা প্রক্রিয়াকরণের পর চূড়ান্ত খাদ্যদ্রব্যে উপজাত বা অবশিষ্টাংশ (residue) বা যাহাদের অনিবার্য উপস্থিতি আদি নহে এইরূপ বস্তু হিসাবে পরিলক্ষিত হয়;

(২৪) **"প্রবিধান"** অর্থ এই আইনের অধীন প্রণীত প্রবিধান;

(২৫) **"ফৌজদারী কার্যবিধি"** অর্থ Code of Criminal Procedure, 1898 (Act No.V of 1898);

(২৬) **"বহিঃস্থ পদার্থ (extraneous matter)"** অর্থ এইরূপ কোন পদার্থ যাহা খাদ্যপণ্য প্রস্তুতকরণে কাঁচামাল বা উৎপাদন, প্রক্রিয়াকরণ বা প্যাকেজিং এ ব্যবহৃত হইবার কারণে উহার মধ্যে উপস্থিত থাকিতে পারে, কিন্তু উক্ত খাদ্যপণ্যকে অনিরাপদ করে না;

(২৭) **"বিধি"** অর্থ এই আইনের অধীন প্রণীত বিধি;

(২৮) **"ব্যক্তি"** অর্থে কোন কোম্পানি, সংস্থা, সংবিধিবদ্ধ হউক বা না হউক, বাণিজ্যিক প্রতিষ্ঠান, অংশীদারী কারবার, সমিতি, সংঘ, সংগঠনও অন্তর্ভূক্ত হইবে;

(২৯) **"ভেজাল খাদ্য"** অর্থ এমন কোন খাদ্য বা খাদ্যদ্রব্যের অংশ,–

(ক) যাহাকে রঞ্জিত, স্বাদ-গন্ধযুক্ত, সংরক্ষণ, প্রক্রিয়াকরণ বা আকর্ষণীয় করিবার জন্য এইরূপ পরিমাণ উপাদান দ্বারা মিশ্রিত করা হইয়াছে, যে পরিমাণ উপাদান মিশ্রিত করা মানব-স্বাস্থ্যের জন্য ক্ষতিকর এবং যাহা কোন আইনের অধীন নিষিদ্ধ; বা

(খ) যাহাকে রঞ্জিতকরণ, আবরণ প্রদান বা আকার পরিবর্তন করিবার জন্য এমন কোন উপাদান মাত্রাতিরিক্ত পরিমাণে মিশ্রিত করা হইয়াছে যাহার ফলে মূল খাদ্যদ্রব্যের ক্ষতি সাধিত হইয়াছে এবং যাহার ফলে উহার গুণাগুণ বা পুষ্টিমান হ্রাস পাইয়াছে; বা

(গ) যাহার মধ্য হইতে কোন স্বাভাবিক উপাদানকে সম্পূর্ণ বা আংশিকভাবে অপসারণপূর্বক অপেক্ষাকৃত স্বল্প মূল্যের ভিন্ন কোন উপাদান মিশ্রিত করিবার মাধ্যমে আপাতঃ ওজন বা পরিমাণ বৃদ্ধি বা আকর্ষণীয় করিয়া খাদ্যক্রেতার আর্থিক বা স্বাস্থ্যগত ক্ষতি সাধন করা হয়;

(৩০) **"মৎস্য"** অর্থ সকল প্রকার কোমল অস্থি ও কঠিন অস্থিবিশিষ্ট মাছ, স্বাদু ও লবণাক্ত পানির চিংড়ি, উভচর জলজ প্রাণী, কচ্ছপ, কাছিম, কাঁকড়া ও শামুক বা ঝিনুক জাতীয় জলজ প্রাণী, একাইনোডার্ম জাতীয় প্রাণী, ব্যাঙ ও উহার জীবনচক্রের যে কোন ধাপ এবং সরকার কর্তৃক, সময় সময়, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, ঘোষিত অন্য কোন জলজ প্রাণীও উহার অন্তর্ভূক্ত হইবে;

(৩১) **"সদস্য"** অর্থ কর্তৃপক্ষের কোন সদস্য এবং, প্রযোজ্য ক্ষেত্রে, চেয়ারম্যানও উহার অন্তর্ভূক্ত হইবেন;

(৩২) **"সভাপতি"** অর্থ পরিষদের সভাপতি এবং, প্রযোজ্য ক্ষেত্রে, পরিষদের সহসভাপতিও উহার অন্তর্ভূক্ত হইবেন;

(৩৩) **"সমন্বয় কমিটি"** অর্থ ধারা ১৫ এর অধীন গঠিত কেন্দ্রীয় নিরাপদ খাদ্য ব্যবস্থাপনা সমন্বয় কমিটি।

দ্বিতীয় অধ্যায়

নিরাপদ খাদ্য ব্যবস্থার প্রাতিষ্ঠানিক কাঠামো

৩। জাতীয় নিরাপদ খাদ্য ব্যবস্থাপনা উপদেষ্টা পরিষদ।– (১) এই আইনের উদ্দেশ্য পূরণকল্পে, কর্তৃপক্ষ এবং নিরাপদ খাদ্য ব্যবস্থাপনার সহিত সংশ্লিষ্ট

সকলকে, নিরাপদ খাদ্য ব্যবস্থা বিষয়ক নীতিমালা ও পরিকল্পনা প্রণয়ন এবং আনুষঙ্গিক অন্যান্য বিষয়ে প্রয়োজনীয় পরামর্শ ও দিক্-নির্দেশনা প্রদানের নিমিত্ত জাতীয় নিরাপদ খাদ্য ব্যবস্থাপনা উপদেষ্টা পরিষদ নামে একটি পরিষদ থাকিবে।

(২) পরিষদ নিম্নবর্ণিত সদস্য সমন্বয়ে গঠিত হইবে, যথাঃ–

(ক) খাদ্য মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী, যিনি উহার সভাপতিও হইবেন;

(খ) মন্ত্রিপরিষদ সচিব, যিনি উহার সহ-সভাপতিও হইবেন;

(গ) জাতীয় সংসদের স্পীকার কর্তৃক মনোনীত একজন সংসদ সদস্য;

(ঘ) সচিব, জনপ্রশাসন মন্ত্রণালয়;

(ঙ) সচিব, স্বরাষ্ট্র মন্ত্রণালয়;

(চ) সচিব, স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়;

(ছ) সচিব, বাণিজ্য মন্ত্রণালয়;

(জ) সচিব, কৃষি মন্ত্রণালয়;

(ঝ) সচিব, মৎস্য ও প্রাণিসম্পদ মন্ত্রণালয়;

(ঞ) সচিব, পরিবেশ ও বন মন্ত্রণালয়;

(ট) সচিব, শিল্প মন্ত্রণালয়;

(ঠ) সচিব, বিজ্ঞান ও প্রযুক্তি মন্ত্রণালয়;

(ড) সচিব, তথ্য মন্ত্রণালয়;

(ঢ) সচিব, স্থানীয় সরকার বিভাগ;

(ণ) সচিব, অর্থ বিভাগ;

(ত) সচিব, লেজিসলেটিভ ও সংসদ বিষয়ক বিভাগ;

(থ) চেয়ারম্যান, বাংলাদেশ বিজ্ঞান ও শিল্প গবেষণা পরিষদ;

(দ) চেয়ারম্যান, বাংলাদেশ আনবিক শক্তি কমিশন;

(ধ) চেয়ারম্যান, বাংলাদেশ নিরাপদ খাদ্য কর্তৃপক্ষ;

(ন) মহাপরিচালক, স্বাস্থ্য অধিদপ্তর;

(প) মহাপরিচালক, খাদ্য অধিদপ্তর;

(ফ) মহাপরিচালক, জাতীয় ভোক্তা-অধিকার সংরক্ষণ অধিদপ্তর;

(ব) মহাপরিচালক, বাংলাদেশ স্ট্যান্ডার্ডস এন্ড টেস্টিং ইন্সটিটিউশন;

(ভ) মহাপরিচালক, বাংলাদেশ এ্যাক্রেডিটেশন বোর্ড;

(ম) পরিচালক, পুষ্টি ও খাদ্য বিজ্ঞান ইন্সটিটিউট, ঢাকা বিশ্ববিদ্যালয়;

(য) চেয়ারম্যান, রসায়ন বিভাগ, ঢাকা বিশ্ববিদ্যালয়;

(র) সভাপতি, ফেডারেশন অব বাংলাদেশ চেম্বারস অব কমার্স এন্ড ইন্ডাস্ট্রিজ;

(ল) সরকার কর্তৃক মনোনীত, একজন সিটি কর্পোরেশন মেয়র ও একজন উপজেলা পরিষদ চেয়ারম্যান; এবং

(শ) সচিব, খাদ্য মন্ত্রণালয়, যিনি উহার সদস্য-সচিবও হইবেন।

(৩) উপ-ধারা (২) এর দফা (গ) ও (ল) এ বর্ণিত ব্যক্তিবর্গ ব্যতীত অন্যান্য দফায় বর্ণিত ব্যক্তিবর্গ পদাধিকারবলে পরিষদের সংশ্লিষ্ট পদে অন্তর্ভুক্ত হইবেন।

(৪) পরিষদ, প্রয়োজনবোধে, সংশ্লিষ্ট যে কোন ব্যক্তিকে পরিষদের সদস্য হিসাবে কো-অপ্ট করিতে পারিবে।

ব্যাখ্যা।– এই ধারায় "সচিব" অর্থে সিনিয়র সচিবও অন্তর্ভুক্ত হইবে।

৪। পরিষদের সভা।– (১) বৎসরে কমপক্ষে ২ (দুই) বার পরিষদের সভা অনুষ্ঠিত হইবে।

(২) এই ধারার অন্যান্য বিধানাবলী সাপেক্ষে পরিষদ উহার সভার কার্যপদ্ধতি নির্ধারণ করিতে পারিবে।

(৩) সভাপতি কর্তৃক নির্ধারিত স্থান, তারিখ ও সময়ে পরিষদের সভা অনুষ্ঠিত হইবে।

(৪) সভাপতি পরিষদের সকল সভায় সভাপতিত্ব করিবেনঃ

তবে শর্ত থাকে যে, সভাপতির অনুপস্থিতিতে পরিষদের সহ-সভাপতি অথবা উভয়ের অনুপস্থিতিতে সভাপতি কর্তৃক মনোনীত উহার অন্য কোন সদস্য সভায় সভাপতিত্ব করিতে পারিবেন।

(৫) পরিষদের মোট সদস্যের এক-তৃতীয়াংশের উপস্থিতিতে সভার কোরাম গঠিত হইবে এবং সভায় উপস্থিত সদস্যগণের সংখ্যাগরিষ্ঠ ভোটে পরিষদের সিদ্ধান্ত গৃহীত হইবে।

(৬) শুধু পরিষদের কোন সদস্য পদে শূন্যতা বা পরিষদ গঠনে ত্রুটি থাকিবার কারণে উহার কোন কার্য বা কার্যধারা অবৈধ হইবে না এবং তৎসম্পর্কে কোন প্রশ্নও উত্থাপন করা যাইবে না।

৫। বাংলাদেশ নিরাপদ খাদ্য কর্তৃপক্ষ প্রতিষ্ঠা, ইত্যাদি।– (১) সরকার, এই আইনের উদ্দেশ্য পূরণকল্পে, এই আইন বলবৎ হইবার পর যথাশীঘ্র সম্ভব, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, 'বাংলাদেশ নিরাপদ খাদ্য কর্তৃপক্ষ' নামে একটি কর্তৃপক্ষ প্রতিষ্ঠা করিবে।

(২) কর্তৃপক্ষ একটি সংবিধিবদ্ধ সংস্থা হইবে এবং উহার স্থায়ী ধারাবাহিকতা ও একটি সাধারণ সীলমোহর থাকিবে এবং, এই আইনের বিধানাবলী সাপেক্ষে, সরকারের পূর্বানুমোদনক্রমে, উহার স্থাবর ও অস্থাবর উভয় প্রকার সম্পত্তি অর্জন করিবার, অধিকারে রাখিবার ও হস্তান্তর করিবার ক্ষমতা থাকিবে এবং কর্তৃপক্ষ, স্বীয় নামে মামলা দায়ের করিতে পারিবে এবং উক্ত নামে উহার বিরুদ্ধেও মামলা দায়ের করা যাইবে।

৬। কর্তৃপক্ষের কার্যালয়।– কর্তৃপক্ষের প্রধান কার্যালয় থাকিবে ঢাকায় এবং কর্তৃপক্ষ, প্রয়োজনবোধে, সরকারের পূর্বানুমোদনক্রমে, বাংলাদেশের যে কোন স্থানে উহার শাখা কার্যালয় স্থাপন করিতে পারিবে।

৭। কর্তৃপক্ষের গঠন।– (১) একজন চেয়ারম্যান এবং চারজন সদস্য সমন্বয়ে কর্তৃপক্ষ গঠিত হইবে।

(২) চেয়ারম্যান ও সদস্যগণ সরকার কর্তৃক নিযুক্ত হইবেন এবং তাহারা কর্তৃপক্ষের সার্বক্ষণিক কর্মকর্তা হইবেন।

(৩) চেয়ারম্যান কর্তৃপক্ষের প্রধান নির্বাহী হইবেন।

(৪) চেয়ারম্যান ও সদস্যগণের বেতন, ভাতা, মর্যাদা এবং চাকুরীর অন্যান্য শর্তাদি সরকার কর্তৃক স্থিরীকৃত হইবে।

(৫) চেয়ারম্যান ও সদস্যগণ এই আইন বা তদধীন প্রণীত বিধি বা প্রবিধান দ্বারা নির্ধারিত বা অর্পিত ক্ষমতা প্রয়োগ এবং কার্য সম্পাদন করিবেন।

(৬) কেবল কোন সদস্য পদে শূন্যতা বা কর্তৃপক্ষ গঠনে ত্রুটি থাকিবার কারণে কর্তৃপক্ষের কোন কার্য বা কার্যধারা অবৈধ হইবে না বা তৎসম্পর্কে কোন প্রশ্নও উত্থাপন করা যাইবে না।

৮। চেয়ারম্যান ও সদস্য পদের মেয়াদ।– চেয়ারম্যান ও সদস্যগণ নিয়োগ লাভের তারিখ হইতে ৪ (চার) বৎসর পর্যন্ত স্বীয় পদে বহাল থাকিবেন।

৯। চেয়ারম্যান ও সদস্যবৃন্দের যোগ্যতা ও অযোগ্যতা।– (১) খাদ্য বিষয়ে অন্যূন ২৫ (পঁচিশ) বৎসরের পেশাগত অভিজ্ঞতা এবং বিস্তৃত বিশেষায়িত জ্ঞান ও দক্ষতাসম্পন্ন কোন ব্যক্তি চেয়ারম্যান হিসাবে নিয়োগ লাভের যোগ্য হইবেন।

(২) নিম্নবর্ণিত বিষয়ে কমপক্ষে ২০ (বিশ) বৎসরের পেশাগত অভিজ্ঞতা এবং বিস্তৃত বিশেষায়িত জ্ঞান ও দক্ষতাসম্পন্ন ব্যক্তিগণ, প্রত্যেক বিষয় হইতে একজন করিয়া, সদস্য হিসাবে নিয়োগ লাভের যোগ্য হইবেন; যথাঃ–

(ক) জনস্বাস্থ্য ও পুষ্টি;

(খ) খাদ্য শিল্প বা খাদ্য উৎপাদন;

(গ) খাদ্যভোগ ও ভোক্তা-অধিকার; এবং

(ঘ) খাদ্য বিষয়ক আইন ও নীতি।

(৩) এই ধারার অন্যান্য বিধানে ভিন্নরূপ যাহা কিছুই থাকুক না কেন, কোন ব্যক্তি চেয়ারম্যান ও সদস্য পদে নিয়োগ লাভের যোগ্য হইবেন না, যদি–

(ক) তিনি বাংলাদেশের নাগরিক না হন;

(খ) নিয়োগ প্রদানের তারিখে, তাহার বয়স ৬০ (ষাট) বৎসরের অধিক হয়;

(গ) তিনি কোন ব্যাংক বা আর্থিক প্রতিষ্ঠানের ঋণ খেলাপী হন;

(ঘ) তিনি কোন উপযুক্ত আদালত কর্তৃক দেউলিয়া ঘোষিত হইবার পর দেউলিয়াত্বের দায় হইতে অব্যাহতি লাভ না করেন;

(ঙ) তিনি কোন উপযুক্ত আদালত কর্তৃক নৈতিক স্খলনজনিত কোন অপরাধের দায়ে ২ (দুই) বৎসর বা ততোধিক মেয়াদের কারাদণ্ডে দণ্ডিত হন এবং উক্ত দণ্ড হইতে মুক্তি লাভের পর ৫ (পাঁচ) বৎসর সময়কাল অতিক্রান্ত না হয়; এবং

(চ) তিনি, প্রত্যক্ষ বা পরোক্ষভাবে, কোন খাদ্য ব্যবসার সহিত যুক্ত থাকেন।

(৪) কর্তৃপক্ষের দায়িত্ব পালনকালে, চেয়ারম্যান ও সদস্যগণ একইসংগে অন্য কোন দপ্তর, সংস্থা বা কর্তৃপক্ষের কোন পদে অধিষ্ঠিত থাকিতে বা দায়িত্ব পালন করিতে পারিবেন না অথবা কোন লাভজনক কর্মে নিয়োজিত হইতে পারিবেন না।

[চলিবে]