

LEX/BDAD/0069/2017

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**IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION)**

Civil Petition for Leave to Appeal Nos. 1484 and 1485 of 2016

**Decided On:** 21.08.2017

Begum Khaleda Zia **Vs.** Anti-Corruption Commission and Ors.

**Hon'ble Judges/Coram:**

*Surendra Kumar Sinha, C.J., Syed Mahmud Hossain, Hasan Foez Siddique and Mirza Hussain Haider, JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Khandker Mahbub Hossain, A.J. Mohammad Ali, Joinul Abedin, Senior Advocates and A.M. Mahbub Uddin, Advocate instructed by Md. Taufique Hossain, Advocate-on-Record*

*For Respondents/Defendant: Mahbubey Alam, Attorney-General and Khurshid Alam Khan, Advocate instructed by Sufia Khatun, Advocate-on-Record*

**JUDGMENT**

**Hasan Foez Siddique, J.**

**1.** The petitioner filed Writ Petition No. 8557 of 2007 challenging Memo No. সি/৯৩-২০০৭ (উপস্থ-২)/৮৩১৩/১(৪) dated 18-9-2007 is sued by the Secretary, Anti-Corruption Commission and the proceeding of ACC GR Case No. 88 of 2007 corresponding to Tejgoan Police Station Case No. 5(09)(07) under section 5(2) of the Prevention of Corruption Act, 1947 read with sections 409/109 of the Penal Code and obtained Rule. In Writ Petition No. 5054 of 2008, the petitioner challenged the proceeding of Special Case No. 4 of 2008 corresponding to ACC GR Case No. 88 of 2007 corresponding to Tejgoan PS Case No. 5(09)07 dated 2-9-2007 under section 5(2) of the Prevention of Corruption Act, 1947 read with sections 409/109 of the Penal Code pending before the Special Judge, Court No. 3, Dhaka and obtained Rule.

**2.** Both the writ petitions arose out of same criminal proceeding. First petition was filed before submission of the police report and second one was filed after submission of the police report and after taking cognizance of the offence against the petitioner by the Special Judge. The High Court Division heard both the writ petitions analogously and disposed of by a single judgment dated 5th August, 2015. It discharged both the Rules holding, inter alia, that the writ petitions were not maintainable.

**3.** Short facts, for the disposal of these two petitions, are that on 2-9-2007 a Deputy Director of the Anti-Corruption Commission lodged an FIR with Tejgoan Police Station against the petitioner and others under section 5(2) of the Prevention of Corruption Act, 1947 read with sections 409/109 of the Penal Code alleging, inter alia, that the Government decided to handle the container of ICD Dhaka and Chittagong Port through a contractor. Accordingly, Chittagong Port Authority issued tender notice on 1-3-2003 incorporating some terms and conditions therewith. Pursuant to the said tender notice, Global Agro Trade (Pvt.) Company Limited (GATCO) submitted tender along with others. The Technical Evaluation Committee of the tendering authority found the GATCO as

lowest bidder. Though GATCO did not have any previous experience in handling container, the committee declared GATCO responsive and recommended the same to the Chittagong Port Authority. Thereafter, following the process same was placed before the Ministry of Shipping for consideration. The Ministerial Committee of the Ministry of Shipping refused to accept the recommendation and proposed to issue retender notice. The proposal of the ministerial committee was placed to the Prime Minister's office. The then Prime Minister (the present petitioner), on 6-12-2003, returned the matter to the Ministerial Committee for reconsideration. At the relevant time, Lt. Col. Retd. Akbar Hossain was the Minister of the Ministry of Shipping. Accused Ismail Hossain Saimon is his son. Saimon contacted with Arafat Rahman (Coko) son of the petitioner seeking help. Coko demanded half of the money to be received by Saimon from GATCO in order to get a positive order by influencing his mother, the petitioner. Saimon accepted the proposal and, accordingly, Arafat Rahman (Coko) upon influencing his mother, the then Prime Minister of the Republic, managed to get the recommendation of the Tender Evaluation Committee approved by rejecting the earlier decision of the Ministerial Committee for issuing retender notice. A Director of GATCO, at the time of holding preliminary inquiry over the matter, admitted that he had paid Taka 2,19,45,091 to Saimon for influencing the petitioner. The petitioner, in collusion with others, allowed GATCO, an inexperienced company for handling operation of Chittagong Port and ICD, Dhaka which caused loss more than Tk. 1,000 crore.

**4 .** On such allegation, the Investigating Officer held investigation and submitted charge-sheet against the petitioner and others under section 5(2) of the Act 1947 read with sections 409/109 of the Penal Code.

**5 .** The Senior Special Judge, Dhaka, took cognizance of the offence against the petitioner and transferred the case before the Special Judge, Court No. 3, Dhaka for holding trial where the case was registered as Special Case No. 4 of 2008 which is pending.

**6 .** Thus, the petitioner upon filing the writ petitions, obtained Rules, which were finally discharged. Against which, the petitioners have filed these two civil petitions for leave to appeal.

**7 .** Mr. Khandker Mahbub Hossain, Mr. AJ Mohammad Ali, Mr. Joinul Abedin, learned Senior Counsel and Mr. AM Mahbub Uddin, learned Counsel appeared on behalf of the petitioner. On the other hand, Mr. Mahbubey Alam, learned Attorney-General appeared for the Government and Mr. Khurshid Alam Khan, learned Counsel appeared for the Anti-Corruption Commission.

**8 .** The learned Counsel for the petitioner, submits that the High Court Division may allow a litigant to invoke extra-ordinary jurisdiction under Article 102 of the Constitution to be converted into course of appeal or revision where the determination is mala fide or where any action is taken by the executives in contravention of law or where the fundamental rights of citizen is affected or the statute is intra vires but the action taken is without jurisdiction and the vindication of public justice require that recourse may be had to Article 102(2) of the Constitution, the High Court Division erred in law in discharging the Rules. They relied on the case of the Anti-Corruption Commission vs. Enayetur Rahman reported in 64 DLR (AD) 14. Their next submission is that no case of dishonesty or fraudulent misappropriation of any public property or otherwise converting for her own use have been disclosed either in the FIR or in the charge sheet, the entire proceeding against the petitioner is liable to be declared bad in law.

**9.** The learned Attorney-General and the learned Counsel for the Anti-Corruption Commission in their submissions stated that the FIR and charge sheet disclosed prima facie case against the petitioner under section 5(2) of the Act II of 1947 read with sections 409/109 of the Penal Code and that the Special Judge took cognizance of the offence against the petitioner, in such view of the matter, the instant writ petitions were not at all maintainable.

**10.** In the recent case of the Chairman, Anti-Corruption Commission vs. Enayetur Rahman reported in 64 DLR (AD) 14 this Division has observed:

"This Court on repeated occasions argued that Article 102(2) of the Constitution is not meant to circumvent the statutory procedures. The High Court Division will not allow a litigant to invoke the extra ordinary jurisdiction to be converted into Courts of appeal or revision. It is only where statutory remedies are entirely ill suited to meet the demands of extra ordinary situations that is to say where vires of a statute is in question or where the determination is mala fide or where any action is taken by the executives in contravention of the principles of natural justice or where the fundamental right of a citizen has been affected by an act or where the statute is intra vires but the action taken is without jurisdiction and the vindication of public justice require that recourse, may be had to Article 102(2) of the Constitution."

**11.** Thereafter, this Division again in the case of Anti-Corruption Commission vs. Mehedi Hasan reported in 67 DLR (AD) 137 has observed:

"As regards Civil Petition for Leave to Appeal No. 652 of 2013 arising out of Writ Petition No. 7242 of 2008, we are of the view that there is no scope for quashing a criminal proceeding under the writ jurisdiction unless the vires of the law involved is challenged. Having gone through the Rule issuing order, we find that the vires of the law involved in the present case has not been challenged. Therefore, there is no scope for aggrandizement of jurisdiction of the High Court Division in quashing a criminal proceeding. Consequently, the High Court Division was not justified in quashing 15 criminal cases (Special Case Nos. 12-26 of 2007) in exercise of its power under Article 102 of the Constitution."

**12.** In proceedings under Article 102 of the Constitution it is not open to the High Court Division to hold an elaborate enquiry into disputed and complicated questions of fact. The High Court Division would only interfere with the proceeding of a criminal court if it is found that such proceeding is without jurisdiction and if there is no other efficacious relief provided in law against such proceeding or the vires of the law basing on which the proceeding initiated is challenged. Where a person has an equally efficacious remedy, the High Court Division would not interfere with criminal proceeding in exercising extra-ordinary jurisdiction. Such powers are to be exercised in rare and exceptional cases. It is true that existence of alternative remedy is not an absolute bar to entertain writ petition by the High Court Division but to declare a criminal proceeding illegal it is to be established that the Court acted without jurisdiction or the vires of the law is in question. In this case no such strong ground has been made out.

**13.** In view of the decision referred and discussion made above, we are of the view that the instant writ petitions were not at all maintainable. Since we are of the view that writ petitions were not maintainable the second submission of the petitioner does not deserve any consideration.

Accordingly, both the petitions are dismissed.

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