

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

Present

Mr. Justice Md. Imman Ali

And

Mr. Justice Sheikh Abdul Awal

SOU MOTU RULE NO. 03 OF 2008.

State

-Versus-

Secretary, Ministry of Home Affairs and others

-----Respondents

Heard on: 25.01.2009 & 02.02.2009

Judgment on : 28.04.2009.

Md. Imman Ali, J.

On 20.04.2008 **Mr. Manzill Murshid**, learned advocate of the Supreme Court, brought to our notice a news item published in the Financial Express on Saturday, 19.04.2008 wherein it was reported that a Bangladeshi-born British was assaulted by security men at Zia International Airport. This Court issued a Sou Motu Rule upon the respondents namely 1. Bangladesh represented by the Secretary, Ministry of Home Affairs, 2. Chairman, Civil Aviation Authority, 3. Additional Superintendent of Police, Immigration, Zia International Airport, 4. Saiful, 5. Deiwar, 6. Mujib, 7. Anowar and 8. Mijan to show cause as to why they shall not be directed to explain the action of the five aforementioned secretary officials, namely Saiful, Delwar, Mujib, Anwar and Mijan (subsequently corrected to Nizam) who were on duty at the Zia International Airport on 14.04.2008, henceforth referred to as the taskforce security officials, and are alleged to have assaulted a Bangladeshi-born British citizen namely, Barrister Rezwn Hossain, and why the concerned authorities will not be directed to inquire into and take appropriate measures in order to prosecute those involved in the incident both departmentally and under the penal laws of the country.

Initially the five taskforce security officials, who, as it transpired, are all officers of the Bangladesh Air Force, refused to accept service of the notice of this Court on the pretext that they were not properly identified. Thereafter, through the assistance and cooperation of the Civil Aviation Authority, full identification of the officers concerned were obtained, and notice having been duly served, they appeared in due course by filing affidavit through their learned advocate Mr. A.H.M. Musfiqur Rahman. The Chairman of the Civil Aviation Authority also appeared through his appointed learned advocate Mr. Saifuddin Ahmed Chowdhury. Mr. Md. Nazrul Islam Chowdhury, learned Deputy Attorney General along with Ms. Nowajish Ara Begum,

learned Assistant Attorney General appeared for respondent No.1 and also filed affidavit in opposition. The matter has been heard over a long period and we also had the assistance of the Judge Advocate General of the Bangladesh Air Force who appeared in the Chamber of the presiding Judge Producing certain papers relating to the proceeding of the Court-Martial which took place against the five taskforce security officials engaged on security duty at the relevant time at Zia International Airport.

The facts, in brief, are that on 14.04.2008 one Barrister Rezwan Hossain, a British National of Bangladeshi origin, who was at the time visiting Bangladesh, went to Zia International Airport to see off his sister and her family, who were traveling to the UK. According to his statement made before the court-martial, he entered into the concourse hail at the airport by paying a fee of Tk.500/- and went as far as the British Airways counter, where his sister and her family checked in for their flight to London. His assistance was then requested by an elderly lady, who was a passenger on the Emirates flight. Mr. Rezwan Hossain then accompanied the elderly lady to the Emirates counter, where he was asked by security staff of the Civil Aviation Authority as to how he entered into the concourse area. According to a report prepared at the behest of the Civil Aviation Authority following the incident, when asked by the Civil Aviation security staff on duty, Barrister Rezwan Hossain stated to the effect that he had entered that area in order to see off his sister, her husband and their child and was trying to help an elderly lady. He was taken to the office of the Duty Security Officer (DSO) who contacted his superior officer over the telephone and, being unable to becalm Mr. Hossain, he contacted the taskforce officials, who took him to their office for questioning. The report further states that it became apparent on the following day that the taskforce personnel had assaulted Mr. Hossain and one of his arms was broken. Mr. Hossain was released after a written statement was taken from him by the taskforce. From the statement of Mr. Hossain before the court-martial it appears that he was first taken from the Airport to Habiganj, his home district, where he was X-rayed and received treatment and later he returned to Dhaka and plaster was applied to his arm at the Square Hospital.

In their affidavit in opposition each of the security officials of the Air Force, who are respondents in this case, annexed the finding of the court-martial, also giving details of the punishment meted out to them. It further appears that under the procedure of confirmation under sections 151/152/156 of the Air Force Act, the sentenced to suffer forfeiture of service for six months for the purpose of next higher rank, and Sergeant M. Saiful Islam, who had been reduced to the rank of Corporal, was confirmed. Respondent LAC Md. Anowar Hossain, who had been initially sentenced to suffer three months in detention, had his sentence remitted to 45 days in detention upon confirmation. In the case of respondent Md. Delowar Hossain, who had been sentenced to be dismissed from the service, on confirmation, his dismissal was commuted to one year forfeiture of seniority in Warrant Officer rank and a severe reprimand. Respondent M. Nizam Uddin was found not guilty as charged and was acquitted. His acquittal was confirmed by the confirming authority.

Respondent No.1 in filing the affidavit in opposition annexed a copy of the statement of Barrister Rezwan Hossain before the court-martial. We note that the deponent stated that in the course of the assault upon him his right leg and left forearm were broken and he expressed his desire to produce the X-ray report and did in fact produce

six- X-ray plates, some of which were taken before plastering and some taken afterwards. It appears that after due trial by the court- martial the respondents No.4 to 7 were convicted and sentenced variously, whereas respondent No8 Nizam was acquitted of the charges leveled against him. Their offences as charged, finding of the court-martial, sentence and final result upon confirmation is tabulated as follows:

Particulars	Charges/ offences	Finding	Sentence	Confirmation (as per sections 151, 152 and 156)
BD/458981 WO Md. Mojibur Rahman LSEW	First charge under section 65 (for Supervisory failure) Second charge- under section 65 for failing to report the ZIA incident to the authority Third charge- under section 58 (b) for failing to report the ZIA incident to the BAF authority.	The court found not guilty of second charge The court found him guilty of First and Third charge.	Forfeiture of Service for 06 months for the purpose of next higher rank.	The finding and sentence have been confirmed by the confirming authority.
BD/467131 LAC Md. Anwar Hossain, GC	First charge under section 71 (for committing assault) Second charge- under section 65 (for join in assaulting) Third charge- under section 36(d) for leaving the duty post. Forth charge under section 65 for stating falsehood before the Board of inquiry. .	The court found not guilty of Third and Forth charge. The court found guilty of First and Second charge.	03 Months detention.	The finding has been confirmed by the Convening authority and the sentence of '03 months detention' has been remitted to "45 days detention"
BD/459233 WO Md. Delwar	First Charge under section 71 (for assaulting	The court found him guilty of all	Dismissed from the Service	The finding has been confirmed by

Hossain Radio Fitt.	Barrister Rizwan) Second charge-under section 58 (a) for failing to report ZIA incident to the authority	Three Charges		the Convening authority and the sentence of "Dismissal" has been commuted to "one year Forfeiture of Seniority in Warrant Officer rank and Severe Reprimand".
BD/461395 Sergeant M Saiful Isalm, Armament Fitt.	First charge-under Section 65 (for filling to refrain in assaulting) Second charge-under section 71 (for abetment in assaulting Barrister Rizwan)	The court found not guilty of Second charge. The court found guilty of First charge.	Reduction of Cpl rank.	The finding and sentence of the court have been confirmed by the confirming authority.
BD/465492 Cpl M Nazim Uddin, GC.	A single charge under section 68 (for abetment of assaulting Barrister Rizwan)	The courts honorably acquit the accused.	Charges are dismissed (acquitted)	The finding of the court has been confirmed by the confirming authority.

Mr. Manzil Murshid, learned advocate appearing in support of the Rule submits that since the matter has been dealt with by a court-martial there cannot be any further criminal prosecution in view of Article 35(2) of the Constitution. However, he points out that the reduction in the sentence by the confirming authority does not appear to do justice to the offences alleged and found to have been committed by the delinquent officers. He asks us to bear in mind that the action and behavior of the taskforce security officers has brought disrepute to our disciplined forces and undermined the dignity of the country in the estimation of the world at large and works as a deterrent for visitors to this country.

Mr. Abdur Razzek Khan, learned advocate appearing along with Mr. A.K.M Mushfiqur Rahman, learned advocate, submits that the delinquent security officials have been dealt with in accordance with the Air Force Act and Rules which governs all their activities while in the service of the Air Force. He submits that the respondents No.4 to have been duly proceeded against under court-martial and punished and prays that the Rule may be disposed of. He further points out that they spent five months in the Air Force custody during the pendency of the court-martial,

which was more than adequate punishment for them. And it is for that reason that the confirming authority reduced the sentences awarded by the court-martial.

Mr. Saifuddin Ahmed Chowdhury, Learned advocate appearing on behalf of the respondent No.2 submits that the Civil Aviation Authority has done all within its powering order to bring the responsible persons to book. He points out that the two security personnel of the Civil Aviation Authority, who initially allowed Mr. Rezwan Hossain into the concourse hall, were found to be negligent in their duty and duly punished by way of dismissal from service. He further points out that the report of the committee engaged to investigate the matter suggested that the employment of security personnel on daily basis caused serious problems due to lack of accountability. He further points out that the installation of CCTV camera to be fixed at the entry gate is under process.

We have considered the submissions of the learned advocate, perused the numerous affidavits which have been filed in support by the various parties to this Rule.

It appears that on the relevant date there was no provision for buying a ticket and entering into the concourse hall in order to go to the checking counters of the various airlines and that Mr. Rezwan Hossain was unlawfully admitted by the security personnel at Gate No. 27. It further appears that Mr. Rezwan Hossain was taken by the security personnel of the joint taskforce into an area under their control where he was physically assaulted and as a result sustained injury on his body, including a broken arm and leg. It also transpires from the various papers submitted regarding the court-martial that Mr. Hossain was abusive towards the security personnel which caused them to retaliate. However, we must state in no uncertain terms that no one is above the law and, if Mr. Hossain or anyone in his position had entered the premises of the Airport without lawful authority that did not give the right to the security personnel to physically assault him. This is a democratic country having well established rule of law. Here no one, however high and mighty he may be, can take the law into his own hands.

The security personnel had the authority to bring legal proceedings against Mr. Hossain for his illegal entry into restricted area, but they had no authority to physically assault him, which they been found to have done by the court-martial.

Mr. Manzill Murshid pointed out to us that in a similar occurrence some years back a foreign national of Bangladeshi origin was assaulted on arrival at Zia International Airport and later succumbed to his injury inflicted upon him by official personnel at Zia International Airport. He further points out that a few weeks after the assault on Barrister Rezwan, another occurrence took place at Sylhet Osmani International Airport where a family were harassed and assaulted by the taskforce personnel posted at that Airport. This type of activity can never be condoned. Come what may, the passengers or indeed any member of the public may not be harassed and physically assaulted by anyone, least of all officials posted there to maintain discipline and order. The Authority concerned should take action in accordance with law if any illegality is found to have been committed by the passengers or members of the public. We accept Mr. Manzill Murshid's submissions that such behavior of the official personnel posted at the Airport sheds bad light on our country as a whole and particularly deters passengers either visiting the country or passenger through on their way to other

countries. We are of the view that this type of activity must be stamped out and must not recur.

Mr. Manzill Murshid had suggested a number of measures that may be taken in order to prevent recurrence of this type of incident, namely installation of CCTV and Camera in all parts of the international airport in order to detect any illegal and untoward activities. He further suggested that CCTV cameras be installed in the rooms where passengers or any other persons are questioned by the security personnel. Another suggestion is that the security personnel must wear visible identification card showing their full name designation. He also suggested that the placing of help desks at different parts of the airport would assist travelers. We are fully in agreement with Mr. Murshid that such proposals, when in place, would prevent or at least reduce the likelihood of recurrence of the incident which we have been made to examine in this Rule.

With regard to the court-martial and punishment meted out by the Court-martial, we note that under the penal laws the offence alleged would be one under section 325 of the Penal Code and carries a sentence of imprisonment which may extend to 7 years and also is liable to fine. It appears to us that the punishment meted out by the court-martial is not commensurate with the gravity of the offence under the penal laws. We also note that in the process of confirmation of the sentence, the two persons who are alleged to have physically assaulted the victim had their sentence reduced considerably and no reasons have been given for such reduction. Nevertheless, we are not sitting in appeal over the decision of the court-martial and are not in a position to vary the sentence passed by the court-martial. However, the authority concerned dealing with officers within the disciplined forces should bear in mind that when criminal offences are committed by members of the discipline force in course of their civil duty, which are termed in The Air Force Act as "Civil Offence", the punishment meted out should at least reflect proportionality to the punishment which would otherwise be imposed under the penal laws, other wise, the whole procedure of trial and sentence becomes a mockery of justice, and the action taken by the court-martial will be undermined in the estimation of the public at large.

Finally, we wish to express our strong condemnation for the behavior of the taskforce security personnel, namely respondents No. 4, M. Saiful Islam, No.5 Md. Delwar Hossain, No.6 Md. Mojibur Rahman and No.7. Md Anowar Hossain. They have brought disrepute to the Air Force and have done a grave disservice to the nation. We can only express our concern at the leniency shown while sentencing the delinquent officers under court-martial.

We hereby direct the Chairman of the Civil Aviation Authority to take steps in order to implement the following:

- i) Installation of Closed Circuit Television Cameras (CCTV) for monitoring the movement of the public throughout the whole area of the international airport.
- ii) All airport personnel, including security personnel, to wear at all times visible identification badges showing, name, designation and post.

iii) Help desks to be installed at vantage points within the airport building and signposting for passengers who may face any difficulties inconvenience or harassment.

iv) Adequate instructions to be imparted upon all airport personnel to behave in a way, which is polite and courteous and reflects a good image of Bangladesh.

Before parting with this matter, we wish to put on record our appreciation for the assistance rendered by the learned advocates and also the Judge Advocate General of the Air Force.

With the above observations, the Rule is disposed of.
