

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

Writ Petition No.10027 of 2011.

In the matter of:

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

AND

In the matter of:

Human Rights and Peace for Bangladesh (HRPB),
represented by its secretary Asaduzzaman Siddiqui,
.. Petitioner.

-Versus-

Bangladesh, represented by the Secretary, Ministry of Civil
Aviation, and others,
... Respondents.

Mr. Manzill Murshid, Advocate,

for the petitioner.

Mr. Azmalul Hossain with

Mr. Mejbahur Rahman, advocates,

for the respondent No.2.

Heard on : 14.02.2012, 15.02.2012

Judgment on 08.03.2012.

Present:

Mr. Justice Mirza Hussain Haider

&

Mr. Justice Muhammad Khurshid Alam Sarkar.

MIRZA HUSSAIN HAIDER, J.

The petitioner obtained this Rule Nisi calling upon the respondents to show cause as to why the decision to automatically upgrade the high profile state dignitaries, so far it relates to the Members of the Parliament only, who are at serial No.13 of the Warrant of Precedence, upon denying to provide the same privilege to other high profile state dignitaries above serial No. 13 of the Warrant of Precedence, as appears from Annexure- A, should not be declared to have been taken without lawful authority and is of no legal effect, as the same is violative of Articles 29 and 31 of the Constitution for being repugnant to the command contained in the Warrant of Precedence and for being ultravires the statute that created Biman and further to show cause as to why they should not be directed to stop all Biman officials/employees, including those on board, from upgrading their chosen non-VIP persons without considering the cases of the dignitaries as described in the Warrant of Precedence and also to show cause as to why respondent No. 1 and 2 should not be directed to withdraw their decision of automatically upgrading any person of their choice without considering the case of the dignitaries, if any, available in the passenger list of the said flight, in order of the hierarchy as set out in the Warrant of Precedence.

In the writ petition it is stated that the Bangladesh Biman is a statutory corporate body run by its Board of Directors, who, by exercising its discretion, passed an order, as contained in Annexure-A to the writ petition, "to upgrade only the Hon'ble Ministers and the Members of Parliament, along with their family only,

holding Economy Class tickets to the Executive Class without any additional charge at the checking counter subject to availability of seat in the executive class.” In the said decision (Annexure-A) the Board further decided that the request of such a person may be refused due to non-availability of seat. This decision of the authority of Biman, respondent No.2, favouring a particular class of dignitaries without considering the case of other higher dignitaries described in the Warrant of Precedence, has been alleged to be discriminatory and hence the petitioner prayed for declaring the said decision of Biman as illegal and to have been passed without lawful authority as the same is violative of Articles 27, 29 and 31 of the Constitution. It is further alleged that due to the operation of the impugned decision of the Biman Authority many other dignitaries were subjected to humiliation on a good number of occasions and as such the petitioner thought it necessary to introduce a general system in the management of the Bangladesh Biman, at least in respect of upgrading the economy class passengers to the executive class without any additional charge. It is further alleged that on an investigation by the petitioner it has been found that the Biman authority being fully aware about the Warrant of Precedence has taken the said decision, as contemplated in Annexure-A, willfully to use this practice to favour other passengers of their choice, who are not even included in the Warrant of Precedence, by which many Biman officials are being benefited financially. This sort of illegal practice leads to offences like corruption and money laundering. Hence this Rule.

By filing a supplementary affidavit the petitioner brought certain other facts to the notice of this court. Therein it is alleged that in respect of carrying passengers the respondent authority many a time expresses non availability of seats/tickets, whereas practically sufficient seats are found vacant on board. This sort of corruption, according to the petitioner, is generally in practice by some unscrupulous employees, who are in charge of managing and selling the tickets. In addition to the same, the petitioner further alleged that all the international airlines, who are in the business today, do not allow extra weight to be carried, along with the passengers, unless a specific reasonable charge for every excess weight, fixed by the said airline, is being paid. But Biman is the only airline, who allows its passengers to carry more than the permissible amount of weight after being satisfied by the illegal gratification for which the National Flag carrier is incurring huge financial loss. The petitioner further alleged that the management of Bangladesh Biman appears to be consisting of persons without sufficient experience in the airline business. Hence to save Biman from suffering any further loss and to make the same a profitable airline, like many other airlines running successful business to and from Dhaka, the petitioner made following proposals for consideration of this Court and to give directions accordingly :

- i) to select the criteria (considering the experience in the sector) of the appointment of the members of the Board of Directors of Biman.
- ii) to organize regular monitoring of the flight operations in order to maintain time table.
- iii) to form a special team to check the weight of the luggage, from time to time, in all the airports in order to stop illegal earning from the luggage.
- iv) to organize on line ticket booking system by the Biman.
- v) to form a high power committee to monitor all purchase and expenditure of the Biman and empower the said committee to take appropriate legal action, if any one is found guilty of any illegality or irregularity ”.

The respondent No.2, namely, the Bangladesh Biman authority, entered appearance in the Rule and filed affidavit in opposition initially to contest the Rule. Subsequently, by filing a supplementary affidavit, on 16.2.2012, the said respondent stated that the “ *affidavit is being filed in consensus with the Petitioner in order to resolve the issues as raised in the instant writ petition* ”

involving a significant public interest.” Accordingly, the respondent No.2, in the said supplementary affidavit, stated that in respect of upgrading the passenger from economy class to the executive class, certain facts are to be taken into considerations which run as follows:

- (i) in cases where the date of travel is known in advance, request for up-gradation will be made in writing to the appropriate officer designated by the Managing Director and CEO, Biman, for this purpose or in cases of urgency verbally at the check-in counter on the day of travel. Such request for up-gradation shall be entertained subject to availability of seat in business class.
- (ii) In considering the request for up-gradation, the appropriate officer will give due consideration to the status of the dignitaries strictly in accordance with the hierarchy as set out in the Warrant of Precedence.
- (iii) In case of check-in-over the counter, upgradation will be allowed on a “first come first serve” basis with priority of requests made in advance.
- (iv) If any extra charges and/or extra payment, in any form, are involved at any station except for ticket fare, same shall be borne by the up-graded passengers.
- (v) Executive Class revenue passengers shall not be downgraded/offloaded to accommodate such request and such request must be refused due to nonavailability of seats on the flight.
- (vi) Up-gradation of the family members of the dignitaries may be allowed subject to availability of seats. No up-gradation should be allowed to Biman Officials/employees without giving priority of the dignitaries listed in the Warrant of Precedence.
- (vii) Appropriate records of all up-gradations shall be maintained centrally by the concerned officer designated by the Managing Director & CEO under Paragraph 1 above. All Station Managers will ensure that immediate information is passed to the designated officer.
- (viii) The Management shall take appropriate steps to ensure that all station managers, check-in staff and others concerned, including the crew on board, are aware of the Warrant of Precedence and this resolution.”

Upon placing this supplementary affidavit the respondent No.2 prayed that the Rule be disposed of pursuant to the proposals made therein which are to be resolved by the Biman authority.

On such backdrop, Mr. Manzill Murshid, the learned advocate appearing on behalf of the petitioner, submits that the Rule can not be disposed of, as prayed for by the respondent No.2, since nowhere in the affidavit in opposition filed by the respondent no.2 it has been stated that the impugned decision of the Biman i.e. Annexure-A has been withdrawn. He further submits that the respondent no.2 did not concede to the fact that the impugned decision is discriminatory, and non-consideration of the case of the other dignitaries who are above serial No. 13 i.e. the Members of the Parliament, in the Warrant of Precedence in the past was wrong. Thus he submits that the decision of the Biman authority, under all circumstances, is illegal, which, if allowed to continue, will cause further humiliation to other high dignitaries. Hence, the said decision must be struck down. On the face of the proposal of the Respondent No.2 in the supplementary affidavit in opposition, Mr. Murshid has raised objection in respect of Proposal Nos. 3 and 6 and thereby submits that if the Biman authority is given a discretionary power to upgrade the passengers at their choice at the check in point then again, in the process, the Warrant of Precedence will be at the threats of being violated . In this respect he submits that it is well known to everybody that by now the Biman has earned bad reputation and the reasons of such bad reputation is known to everybody as already has been stated in the writ petition as well as in the supplementary affidavit. So, none of the employees of the Biman (respondent No.2) under any circumstances should be allowed to upgrade their family members or themselves from Economy class to Executive class since they

enjoy the benefit /privilege of getting yearly, free and concessional air passage facility at a much reduced price.

Mr. Murshid in addition to the above submissions further contended that the chronological order of the Warrant of Precedence are often not being followed by the local administration inside the country which also causes humiliating situations for the dignitaries. This aspect also requires to be addressed by the Court.

Mr. Azmalul Hossain, the learned advocate appearing on behalf of the respondent No.2, upon placing the supplementary affidavit dated 16.2.2012, submits that the contentions of the learned advocate for the petitioner that the discretion should not be given to the Biman authority to give benefit to their employees is not correct nor the same is in accordance with law. Because, all such service providers provide similar facilities to their employees in both international and domestic levels. The departments like Railway, Highways, waterways running such businesses have general power to give certain benefits to their employees which is nothing but a sort of incentive given to them to provide better service to the concerned organization. Moreover, there are certain facts to be kept in mind, such as sometimes the authority requires to exercise their discretion to their own employees under certain circumstances for the betterment and benefit of the company. Thus, he submits that, the proposal made in the supplementary affidavit in opposition in this respect are required to be taken into consideration. Lastly, he submits that since Biman is a Public limited company, and since it is true that the authority failed to act in appropriate manner in dealing with all the dignitaries mentioned in the Warrant of Precedence in accordance with the chronological serial, the proposal should be accepted and the Rule should be disposed of.

Having gone through the writ petition, supplementary affidavit, affidavit in opposition and supplementary affidavit in opposition filed by the petitioner and the Respondent No.2 along with all the annexures appended thereto and upon hearing the learned advocates of both the parties, it appears that Annexure-A to the writ petition i.e. the decision taken by Respondent No.2 (The Biman authority) in respect of up-gradation of the Hon'ble Ministers and the Members of Parliament and their family members only, who are admittedly in Serial No. 5 and 13 respectively in the Warrant of Precedence, from economy class to executive class, without considering the cases of hierarchy of other dignitaries mentioned in the Warrant of Precedence, is nothing but an act of exercising the discretionary power conferred upon the respondent no.2 in an unjust manner, which leads to ignoring the cases of other dignitaries according to their hierarchy in the warrant of precedence. Thus, the impugned decision does not appear to have been exercised diligently or judiciously and as such the same is illegal and without lawful authority. Exercising the discretionary power is a sacred entrustment upon the authority who must exercise it with due diligence, coupled with fairness, reasonableness and in good faith. It must not be exercised arbitrarily or capriciously so that any other person, with better/similar footing, does not feel that he has been treated in a discriminatory manner or unjustly.

Equality is the order of the day in all directions. But in the present case the decision taken by the respondent No.2 vide Annexure-A clearly discloses that the same has not been taken with due diligence or with fairness or reasonableness; rather the same appears to have been taken in a discriminatory manner without considering the cases of the other dignitaries according to the hierarchy in the Warrant of Precedence. Hence, whenever the question of up-gradation of any dignitary from economy class to executive class without payment of excess charges arises, the authority of the Biman, under the law, is to take into consideration the hierarchy as set out in the Warrant of Precedence available in the passengers list in order to accommodate them with respect according to their hierarchy in the Warrant of Precedence. They should be taken care of in respect of

upgrading their seats in accordance with their position and serial as described in the Warrant of Precedence. Thus, we find that the impugned decision of the Respondent No.2, which has been annexed as Annexure-A, has been issued and passed without lawful authority and is of no legal effect.

Now comes the question as to how to handle a situation of similar nature. In this respect the proposals as has been made by Respondent No.2 as mentioned earlier, and most of which have been accepted by the petitioner, and the said proposals being reasonable, can be applied as the procedure for handling any situation of similar nature upon strictly following the principle that whenever the higher class seats are available/vacant the dignitaries available in the passengers' list must be given priority according to their hierarchy set down in the Warrant of Precedence for upgrading, without disturbing the regular passenger who purchased higher class tickets on payment of regular fare. In the absence of any such dignitary in the passengers' list or after upgrading the available dignitaries if any seat is available /vacant then the Biman authority may consider the case of upgrading any other person/officials /employee of Biman, whosoever he may be, to the higher class either on payment of extra charges or complementarily. But under no circumstances the case of any dignitary shall be ignored or any such dignitary shall be subjected to humiliation.

Before parting, we like to observe that in the Rule issuing order, the Respondents were directed to submit a report as to how many economy class passengers had been upgraded during the period of preceding three years, upon stating the reasons/basis of such up gradation and at whose instance they were upgraded along with their status and also the number of non-VIP economy class passengers who were upgraded by or at the instance of Biman officials/employees.

In this respect the respondent no.2 in its affidavit in opposition annexed a piece of papers as Annexure-3 incorporating the names of 15 (fifteen) persons only in two categories, namely A and B. The note incorporated in the said annexure shows that under category-A seven persons have been upgraded and under category-B eight persons have been upgraded from 13/12 (without mentioning any year, although the direction was to submit a report for preceding three years) and also without mentioning the basis of such upgradation and without supplying the list of non-VIP economy class passengers. Thus, it is clear that the Biman authority did not comply with the direction of this Court, probably due to not maintaining any record of upgradation of the passengers in any register. This picture clearly shows that the Biman authority has totally failed to disclose the number of upgraded passengers because they do not maintain any record in this respect. It is not understood how the matter has been dealt with by the audit team? We do not know whether this issue has ever been looked into by the audit department. It is also not known as to whether this practice is within the notice of the higher authority of Biman. It is known to everybody that the international airlines are required to maintain record of carrying the passengers or cargos, as it needs to maintain proper record of profit and loss. From the said Annexure-3 it appears that the Respondent No.2 admitted that they do not have any record in this respect, which is not a plausible story that the national flag carrier shall not maintain proper record as to its earning and expenditure. This action of Respondent No.2 in respect of handling the international airline passengers is not at all appreciable. This must be brought in order by providing proper guideline to make the management of Biman accountable and transparent to everybody. In this respect we find substance in the submissions of the learned advocate for the petitioner that there should be a proper guide line for better management of the administration of Respondent No.2 through which the national flag career can overcome its bad reputation of a permanent "losing concern."

Thus, we direct Respondent No.1, the Ministry of Civil Aviation, to look into the affairs of the administration, management, flight operation and the accounts

relating to earning from carrying both passengers, their luggage, goods/cargos and take necessary steps in those matters for introducing a better system of the same preferably as has been proposed by the petitioner and thereby constitute appropriate vigilance team to monitor the online ticketing system, carrying luggage/cargos, and the affairs of the entire administration of Biman and thereby find out the unscrupulous employees involved in all sorts of misdeeds and corruptions and bring them to tasks for such offences and accordingly ensure that the Biman becomes a profitable organization and the tax payers' money are not misused.

With these observations and directions, the Rule is made absolute. The decision taken by the Respondent No.2 in respect of up gradation of the passengers from economy class to higher class vide Annexure-A is declared to have been taken without lawful authority and of no legal effect.

The management of Biman is directed to implement the following directions as agreed upon by both the parties:

- 1) in cases where the date of travel is known in advance, request for up gradation will be made in writing to the appropriate officer designated by the Managing Director and the CEO, Biman for this purpose or in cases of urgency, verbally, at the check-in counter on the day of travel. Such request for up-gradation shall be entertained subject to availability of seat in the higher/business class.
- 2) In considering the request for up-gradation, the appropriate officer will give due consideration to the status of the dignitaries strictly upon giving preference, in accordance with the hierarchy as set out in the Warrant of Precedence.
- 3) In case of check-in-over the counter, up-gradation will be allowed on a first come first serve basis with priority of requests made in advance.
- 4) If any extra charges and/or extra payment in any form are involved at any station except for ticket fare, same shall be borne by the upgraded passengers.
- 5) Executive Class revenue passengers shall not be downgraded/offloaded to accommodate such request and such request must be refused due to non availability of seats in the upper/ business class on the flight.
- 6) Up gradation of the family members of the dignitaries may be allowed subject to availability of seats. No up-gradation shall be allowed to Biman Officials/Employees, whosoever may be, without giving priority to the dignitaries listed in the Warrant of Precedence available in the passengers list.
- 7) Appropriate records of all up-gradations shall be maintained centrally by the concerned officer designated by the Managing Director & CEO under Paragraph 1 above. All Station Managers will ensure that immediate information is passed to the designated officer.
- 8) The Management of Biman shall take appropriate steps to ensure that all station managers, check-in-staff and others concerned, including the crew on board are supplied with copy of the Warrant of Precedence and sufficient instruction for strict compliance of this order.

The respondents are directed to implement the order in accordance with law. The Respondent No.1 is directed to circulate copy of the Warrant of Precedence to every office of Biman throughout the world, the Secretary, Ministry of Foreign Affairs is directed to circulate copies of Warrant of Precedence to all the Bangladeshi missions in all the foreign countries and the Secretary, Ministry of Public Administration as well as the Secretary, Ministry of Home are also directed to circulate necessary number of copies to the Deputy Commissioners and Superintendents of Police of all the districts in Bangladesh and also to the Upazila Nirbahi Officers and to the Officer in-charge of all the police stations of the country and direct all, both in and outside the country, to act in accordance

with the same, without fail and thereby maintain the image, status and dignity of all the dignitaries of the country in all aspects of life.

However, there will be no order as to cost

Let a copy of this judgment be communicated to the Secretary, Ministry of Public Administration, Ministry of Home Affairs and Ministry of Foreign Affairs for taking necessary steps in accordance with the directions given above.
