

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

Writ Petition No. 1698 of 2014

IN THE MATTER OF:

Human Rights and Peace For Bangladesh

..... Petitioner.

-Versus-

Bangladesh and others.

..... Respondents.

Mr. Manzil Murshid, Senior Advocate with

..... For the Petitioner.

Mr. A.K.M Amin Uddin, D.A.G with

Ms. Anna Khanom Koli, A.A.G and

Mr. Md. Shaifour Rahman Siddique, A.A.G

..... For the Respondents.

Mrs. Fowjia Akter Popy, Advocate

...For the Anti-Corruption Commission.

Heard on: 14.02.2022, 07.03.2022 and

Judgment on: 13.03.2022

Present:

Mr. Justice Md. Nazrul Islam Talukder

And

Mr. Justice Md. Mostafizur Rahman

Md. Nazrul Islam Talukder, J:

On an application under Article 102 of the Constitution of the People Republic of Bangladesh, the Rule Nisi, at the instance of the petitioner, was issued by this Court calling upon the respondents to show cause as to why inaction of the respondents to take steps as per provision of law laid down in the Anti-Corruption Commission Act, 2004 for disobeying the summons against the 17(Seventeen) CBA leaders, Central Committee, Biman

Bangladesh Airlines, which was issued to interrogate/investigate them about corruption and irregularities in Biman Bangladesh Airlines, should not be declared illegal as being violative of the Articles 21 and 31 of the Constitution of Bangladesh and/or pass such or further order or orders as to this Court may seem fit and proper.

During pendency of the Rule, this Court, by an order dated 28.01.2021, directed the Anti-Corruption Commission to inform this Court as to what steps, in the meantime, have been taken or not against the 17(seventeen) CBA leaders, Central Committee, Biman Bangladesh Airlines within a week from the date of receipt of this order.

Following the aforesaid order, the Anti-Corruption Commission, submitted affidavit-in-compliance dated 23.02.2021 annexing a letter dated 22.02.2021 stating therein, inter-alia, that an inquiry team was constituted for making inquiry into the allegations. Since the allegations were not found true, the inquiry proceeding was terminated and the same was communicated to the concerned persons by a letter dated 06.03.2019. It is further stated therein that one Syed Ahmed, Deputy Director was the team leader of the inquiry proceeding but he went into retirement one year ago as a result of which it has not become possible to peruse and examine the inquiry records but it transpires that the accused-person appeared before the inquiry team and gave their statements with necessary papers and documents.

Under such circumstances, the Anti-Corruption Commission was directed to produce the concerned records of the inquiry proceedings including the inquiry report and statements given by the 17/20 CBA leaders, Central Committee, Biman Bangladesh Airlines, before this Court on or before 09.03.2021 positively and without fail.

Pursuant to the above order, the Anti-Corruption Commission, by affidavit-in-opposition dated 07.03.2021, submitted the notices dated 12.01.2014, 11.03.2014 and 22.05.2016 upon the CBA leaders, written response of the CBA leaders in the form of statement, inquiry report dated 03.01.2019 and the notice informing end of inquiry dated 06.03.2019.

In view of the above facts and circumstances that on 15.09.2021, a supplementary Rule Nisi was issued, on the application of the petitioner, calling upon the respondents to show cause as to why inaction of the respondents to interrogate the 17(seventeen) CBA Leaders and to inquire /investigate the matter on its own volition by examining the necessary papers and documents obtaining from different stakeholders like Banks, Insurances and Leasing Companies, Sub-Registry Offices, or from Joint Stocks or Stock Exchanges and accordingly, prepare the inquiry report.

The facts leading to issuance of the Rule are as follows :

I) That the organization Human Rights and Peace for Bangladesh (HRPB) and Bangladesh Human Rights Foundation are non profitable registered organization and the objects of the organizations are to uphold the human rights of the citizen and to work for the poor people, to give legal support to the helpless people and to build up awareness amongst the people about their rights etc; the organizations are engaged in promoting and defending human rights and supporting the victims of human rights violations; it also works to establish the rule of law.

II) That the learned Advocate for the Petitioner is a practicing lawyer of this Hon'ble Court, human rights activist and conscious citizen of the country. The Petitioner is seeking direction upon the respondents to ensure the inquiry/investigation regarding corruption of the CBA leaders of the Biman Bangladesh Airlines as early as possible in accordance with law; the Petitioner also seeks to bring this application by invoking Article 102 of the Constitution as a public interest litigation in order to get protection of law.

III) That the Respondent No.1 is the Bangladesh represented by the Secretary, Ministry of Civil Aviation, Bangladesh Secretariat, P.S.: Shahbag, District: Dhaka, Bangladesh. Respondent No.2 is Biman Bangladesh Airlines, a statutory body corporate operating pursuant to Bangladesh Biman Corporation Ordinance, 1977, represented by its Managing Director, Biman Bangladesh Airlines, Head Office, Balaka Bhaban, Airport Road, Dhaka, Bangladesh. Respondent No.3 is the Anti-Corruption Commission, represented by its Chairman, Shegunbagicha, Dhaka, Bangladesh. Respondent No.4 is the National Board of Revenue (NBR), represented by its Chairman, Shegunbagicha, Dhaka, Bangladesh. Respondent No.5 is the President, CBA, Biman Bangladesh Airlines, Head Office, Balaka Bhaban, Airport Road, Dhaka, Bangladesh. Respondent No.6 is the General Secretary, CBA, Biman Bangladesh Airlines, Head Office, Balaka Bhaban, Airport Road, Dhaka, Bangladesh.

IV) That the Respondent No.2 is a statutory emanation which was initially brought into being by operation of Bangladesh Biman Corporation Ordinance, 1977. It is now a public limited company, the primary object of it is to maintain air line and carry passengers; although it is a commercial body, it is nevertheless an entity, most of whose shares are held by the State and it does perform the functions in connection with the affairs of the Republic and is, indeed, a local authority as per the definition provided in Article 102(5) of the Constitution and the General Clauses Act and hence it is very much amenable to our writ jurisdiction under Article 102 of our Constitution; the Respondent No.1 is the secretary of the Ministry who is responsible for the overall supervision of the Respondent No.2; the Respondent No.3 is the Chairman of Anti-Corruption Commission who is vested with the duties and

responsibilities in regard to prevention of corruption, inquiry and investigation of certain offences and matters in corruption cases.

V) That the matter is involved in the matter of the rule of law; though the Anti-Corruption Commission issued summons against 17 (seventeen) CBA leaders, Central Committee, Biman Bangladesh Airlines to interrogate about their corruption and irregularities in the Biman Bangladesh Airlines, they refused to appear before the Anti-Corruption Commission which shows inefficiency of the Respondent Nos.1-4. If no steps is taken to investigate such corruption and irregularities immediately and if such refusal of the respondents to appear before the Anti-Corruption Commission is not declared to have been done without lawful authority and is of no legal effect, it may cause prejudice; hence, the petitioner has moved this Public Interest Litigation (PIL) before this Hon'ble Court; since it involves great public importance; this petition may be treated as public interest litigation.

VI) That a report was published in The Daily Kaler Kantho on 29.01.2014 on the ground that “দুদকের নোটিশে সাড়া দেয়নি বিমানের সিবিএ”; it was reported that to inquire/investigate against the corruption and irregularities of the CBA leaders in the Biman Bangladesh Airlines, the Managing Director, Biman Bangladesh Airlines several times submitted letters before the Anti-Corruption Commission; recently, the Anti-Corruption Commission issued summons against the 17 (seventeen) CBA leaders of central committee, Biman Bangladesh Airlines to interrogate, but they refused to appear before the Anti-Corruption Commission; it is also stated that showing disregard to the notice issued by the Anti-Corruption Commission, the General Secretary, CBA said that “আমরা যেহেতু নৈতিক অবস্থানে দৃঢ় রয়েছি, সেহেতু ওই তলবী নোটিশে সাড়া দেইনি। বিষয়টি আমরা আইনগতভাবে মোকাবেলা করব”; according to the news report, the CBA leaders in Biman Bangladesh Airlines are involved with varieties of corruption and irregularities in respect of recruitment, transfer etc. and they have took possession of crores of money through corruption (annexure-A to the writ petition).

VII) That in conducting inquiry and/or investigation into the allegations, the respondents relied on the documents provided by the said 17(seventeen) CBA leaders, but the respondents did not collect the necessary information on its volition from different stakeholders like Banks, Insurances and Leasing Companies, Sub-Registry Offices or form Joint Stocks or Stock Exchanges to find out corruption and hence, they failed to dig out alleged corruption so as to bring out all ins and outs of corruption as addressed by the petitioner in this petition.

VIII) That the inquiry report as submitted by the Respondent No.3 suffers from infirmity in terms of standard interrogation/investigation under the law and rules and so it has diminished/lowered the trust of the public at large.

Being aggrieved by the inaction of the respondents to take steps as per provision of law laid down in the Anti-Corruption Commission Act, 2004 for disobeying the summons against the 17(Seventeen) CBA leaders, Central Committee, Biman Bangladesh Airlines, which was issued to interrogate/investigate them about corruption and irregularities in Biman Bangladesh Airlines as well as inaction of the respondents to interrogate the 17(seventeen) CBA Leaders and to investigate the matter on its own volition by examining the necessary papers and documents obtaining from different stakeholders like Banks, Insurances and Leasing Companies, Sub-Registry Offices or form Joint Stocks or Stock Exchanges and accordingly, prepare the inquiry report, the petitioner approached this Court with an application under Article 102 of the Constitution of the People's Republic of Bangladesh and obtained the Rules.

The Anti-Corruption Commission filed affidavit-in-opposition dated 07.03.2021 and stated therein, inter-alia, as follows:

I) That vide Memo No.DUDAK/B:Onu:O Todonto-1/59-2013-1091-1(2) dated 12.01.2014, Anti-Corruption Commission served first notice upon the CBA leaders of Biman Bangladesh Airlines but they failed to appear before the Commission on the specified date. Thereafter, vide Memo No.DUDAK/B:Onu:O Todonto-1/59-2013/7827/1 dated 11.03.2014, another notice was served upon the said CBA leaders against which they filed a writ petition being No.3424/2014 before the High Court Division. Against the order of the High Court Division, the Anti-Corruption Commission filed Civil Petition For Leave To Appeal No.1280/214 and the Hon'ble Judge in Chamber was pleased to stay the order of the High Court Division. On 20.01.2016, the Rule issued in the Writ Petition No.3424/2014 was dismissed for default. Finally, vide Memo No.DUDAK/B:Onu:O Todonto-1/59-2013/21177/1(2) dated 22.05.2016, Anti-Corruption Commission issued another notice against those CBA leaders addressing Managing Director of Biman Bangladesh Airlines to make sure of their appearance before the Commission (annexures-“2A, 2B and 2C” to the affidavit-in-opposition).

II) That upon receiving the notice dated 22.05.2016, the notice receivers (CBA leaders) responded and submitted their statements accordingly; the photocopies of the statements dated 30.11.2017 submitted by 1) Md. Mushikur Rahman 2) Ajharul Imam Mojumder 3) Md. Anower Hossain 4) Md. Eunus Khan 5) Md. Montashar Rahman 6) Md. Rubel Chowdhury 7) Md. Rafiqul Alam, by 8) Md. Abul Kalam 9) Md. Atiqur Rahman 10) Md. Harun-Or-Rashid 11) Md. Abdul Bari Lablu 12) Md. Ferojul Islam 13) Md. Abdus Shobhan 14) Most. Asma Khanam Ranu 15) Md. Golam Kaiser Ahmed 16) Md. Abdul Jabbar 17) Md. Abdul Aziz, are produced and annexed (annexures-“3A, 3B, 3C, 3D, 3E, 3F,

3G, 3H, 3I, 3J, 3K, 3L, 3M, 3N, 3O, 3P and 3Q” “4” to the affidavit-in-opposition).

III) That on 31.08.2016, the inquiry committee after completion of the inquiry finding no prima-facie case against the notice receivers submitted report with recommendation to close the inquiry. The Commission not being completely satisfied with the inquiry, on several occasions asked the inquiry team to re-inquire into certain issues which they carried out and finally, on 03.01.2019, the inquiry Committee submitted its inquiry report along with the recommendation to end the inquiry. The Commission after considering the inquiry report along with other records, found out that no allegation was proved against the notice receivers and thus decided to bring the inquiry to an end and the file was accordingly kept on record (annexure-“4” to the affidavit-in-opposition).

IV) That final decision regarding the conclusion of the inquiry was communicated to the notice receivers in due course vide Memo No.00.01.0000.501.01.059.13-14 dated 06.03.2019 (annexure-“5” to the affidavit-in-opposition).

At the very outset, Mr. Manzil Murshid, the learned Senior Advocate appearing on behalf of the petitioner, submits that challenging the inaction of the Respondent No.3 was rightly addressed by the petitioner in this writ petition because the alleged 17 CBA leaders of Bangladesh Biman refused to appear before the Inquiry Committee of Anti-Corruption Commission and the respondents did not take steps in accordance with legal provisions of Section 19 of the Anti-Corruption Act, 2004 against the said leaders for such refusal and so, the inaction of the Respondent No.3 is rightly addressed in this writ petition; hence, there is no cause and ground for discharging the Rule or declaring it as being infructuous; moreover, after the writ petition being filed, the Respondent No.3 was able to bring them within the inquiry procedure of ACC but the allegation of inaction of the Respondent No.3 is still in existence because such allegations were not dug out with thorough search and investigation following rules and procedures and as such, this Court is competent enough to pass any order to find out the real picture of corruption.

He next submits that the alleged inquiry against such CBA leaders along with some family members was not conducted properly since its inception because it is seen that inquiry report was submitted on several occasions with no merit in it and so they were not accepted by the Respondent No.3; that the Inquiry Committee issued notice only to such CBA leaders and/or to the Managing Director, Bangladesh Biman Airlines and the said committee examined the documents and papers submitted by the CBA leaders and finally prepared a report dated 03.01.2019 recommending to conclude the inquiry since no allegations were proved; the Inquiry Committee did not issue any notice to any Bank

or Sub-Registry Office or any third party nor communicate with those bodies/entities for neutral and material information as regards wealth and assets of such leaders, which was always done by other cases; hence, the manner of conducting the inquiry proves that the inquiry was not conducted in line with legal requirement and annexed questionnaire as spelled out in the Anti-Corruption Commission Manual 2018, to find out necessary facts and figures and so, this Court may pass necessary order for the ends of justice.

He then submits that it is seen from the inquiry report dated 03.01.2019 that it was accepted by the Respondent No.3 on the same day; the ACC has not taken the decision properly as per their mandate in law and so this Court may pass an order to inquire into the matter properly and effectively following the rules and procedures.

He candidly submits that in conducting and investigating the case, the respondents discharged the responsibility just in words, not in action and so, they relied on the documents provided by the said 17(seventeen) CBA leaders; the respondents did not collect the information on its volition from different stakeholders like Banks, Insurances and Leasing Companies, Sub-Registry Offices or from the Joint Stocks or the Stock Exchanges etc. to find out corruptions as addressed by the petitioner in this writ petition and hence, they failed to dig out alleged corruptions as assumed by the said leaders and so the Rule as well as the supplementary Rule in this Writ Petition may be made absolute to bring out all ins and outs of corruption as addressed by the petitioner in the writ petition.

He additionally submits that the inquiry report as submitted by the Respondent No.3 suffers from infirmity in terms of standard interrogation/investigation under the laws and rules and so it has diminished/lowered the trust of the public at large and so, this Court may pass necessary order for the ends of justice.

He strenuously submits that as per Section 17(T) the Anti-Corruption Commission Act, 2004, the power has been vested upon the Commission to determine the procedure of inquiry, investigation, filing of corruption cases in accordance with law, but in this case, the respondents were in clear failure to perform their responsibilities in due process of law though as per Article 21 of the Constitution of Bangladesh, the duty of every public servant is to perform public duties and to observe the Constitution and the laws in strict sense.

He vigorously submits that as per Section 19(1) (K) of the Anti-Corruption Commission Act, 2004, the Commission shall have the powers in matters of inquiry or investigation against corruption to issue summons and ensure attendance of witnesses and ask questions to witness upon administering oath and besides this, according to Section 19(2) of the aforesaid Act, the Commission may direct any person to furnish information relevant to inquiry or investigation and the person so directed shall be bound

to furnish such information and if any person violates this provision, such act of the person shall be an offence punishable with imprisonment for a term not exceeding 3(three) years or fine or with both, but the Respondent No.3, instead, protect the Respondents No.5-6 and/or take the side of them in violation of applicable laws and hence, this Court may pass necessary order for the ends of justice.

He strongly submits that under Rule 9Ka of the Anti-Corruption Rules 2007, the Commission has been empowered to make any further inquiry in any case which has been terminated or closed; in the instant case it is evident that the total inquiry was done by the inquiry officer without following the rules and customs and hence for the ends of justice, a direction may be given to inquire the allegations case as per rules and laws.

He has pointed out that Rules 20(4) of the Anti-Corruption Commission Rules, 2007 has provided the procedure in which the inquiry officer has given ample power to examine Bankers book and many other documents in case of any inquiry but in the instant case the inquiry officer except the information supplied by CBA leaders did not ask for any statement from any Bank or deeds from different sub registry offices etc. and such, it is clear that the information was not fully collected to show whether any corruption was committed or not and hence it is necessary to pass an order to hold inquiry into the allegations following the rules by way of collecting information from Bank, Sub Registry Office and Financial Institution and others offices.

He lastly submits that the duty and responsibility has been vested upon the ACC to serve the people and they are duty bound to obey the provisions of law; it is the duty of ACC to act legally but no law has allowed the respondents to neglect their duties but the respondents have failed to perform their duties and responsibilities as per the Constitution and that under Article 31 of the Constitution of Bangladesh, everyone is to be treated in accordance with law and according to the news report, the provisions of the Constitution of Bangladesh have been violated.

On the other hand, Mrs. Fowjia Akter, the learned Advocate appearing on behalf of the Anti-Corruption Commission, submits that the Rule dated 10.04.2014 was issued under the impression that Anti-Corruption Commission was inactive or did not perform its duty regarding the allegation of corruption against the CBA leaders of Biman Bangladesh Airlines in accordance with law, however, from the annexures to the affidavit-in-opposition, it is clear that all along, the Commission has performed its duty with utmost sincerity, with transparency and in accordance with law; the Commission's actions include serving notices, receiving statements and documents from the notice receivers, conduct thorough and exhaustive inquiry and upon conclusion of the inquiry, communicating the outcome of the inquiry to the notice receivers in

accordance with law; since the Commission took positive action after receiving the allegations against the CBA leaders of Biman Bangladesh Airlines, the whole purpose of the issuance of the Rules have become infructuous.

She next submits that although the CBA leaders against whom the allegations were brought did not respond promptly to the very first notice served upon them and stayed the effectiveness of the second notice by filing a writ petition, however, eventually they have responded to the third notice and appeared before the Commission to explain their position in writing; the inquiry team after considering the statements along with other documents submitted by the CBA leaders and after conducting exhaustive inquiry and being satisfied that *prima facie* no allegation was proved against them, decided to end the inquiry.

She then submits that with the end of the inquiry, the issue for which the writ petition was filed, has died; continuing with the Rule, after closing of the file in accordance with law, amounts to abuse of the process of the court and as such, the Rules issued may kindly be discharged.

She candidly submits that the notice was issued under Sections 19 and 20 of the ACC Act of 2004 along with Rule 20 of the Anti-Corruption Commission Rules, 2007 to carry out initial inquiry; although the petitioner has made several references of Section 26 of the Act while putting forward his submission before the Hon'ble Court which are misconceived; Section 26 of the Act has no manner of application in the instant writ petition; it is a precondition to conduct an initial and internal inquiry before issuance of notice under Section 26 of the Act and only after being satisfied serve notice to submit wealth statement; in this regard **ACC v. Sheikh Hasina Wazed, reported in 60 DLR(AD)172** attracts special attention. For the kind perusal of the Court, several paragraphs of the said case are inputted below:

Paragraph No.31: "The grievance of the petitioners of each of the writ petitions is that the respective impugned order does not disclose what are the information received by the Government and what are the inquiry so made by the Government that led it to be so satisfied. The Government appeared to have conducted a secret preliminary inquiry and the same was not at all required to disclose the information received by it and also the nature of inquiry made by it."

Last part of Paragraph No.32 reads as : "Moreover, the Commission is not required to disclose any specific material or investigation report for issuing an order asking for statement of assets and the satisfaction is that of the Commission and none else as has been held in case of Mustafiqur Rahman V-D-G, Anti-Corruption Commission, reported in 49 DLR, 599; the objective satisfaction is not contemplated by the Act."

She strongly submits that according to the decision of the Apex Court in the above-mentioned case, before serving a notice under Section 26, ACC has to be satisfied about the allegation upon initial inquiry and that after the internal confidential inquiry satisfaction of ACC could go either direction, i.e., decision to serve notice under Section 26 to submit wealth statement or end the inquiry finding no prima facie case and communicate the same to the persons against whom allegations were made; either way the satisfaction is that of the ACC only and the ACC is not required to disclose the information received and also the nature of inquiry made by it; therefore, any assertion by the petitioner on how to conduct inquiry by ACC is not tenable in the eye of the law and as such, the Rules may kindly be discharged for ends of justice.

We have gone through the writ petition, affidavit-in-opposition and the materials annexed therewith and perused the same. We have also heard the learned Advocates for the respective parties at length and considered their submissions to the best of our wit and wisdom.

It appears from the writ petition that the petitioner has filed the instant writ petition as public interest litigation on the basis of a newspaper clipping published in the Daily Kaler Kantho on 29.01.2014 alleging, inter-alia, that the CBA leaders in Biman Bangladesh Airlines are involved with varieties of corruption and irregularities in respect of recruitment, transfer etc and they have taken possession of crores of money through corruption. The petitioner also alleged that upon receiving a complaint from the then Managing Director of Biman Bangladesh Airlines, the Anti-Corruption Commission issued summons under Section 19 of the Anti-Corruption Commission Act, 2004 against 17(seventeen) CBA leaders, Central Committee, Biman Bangladesh Airlines to interrogate about their corruption and irregularities, but they failed to appear before the Anti-Corruption Commission on the date specified.

It is pointed out by Mrs. Fowjia Akter Popy, the learned Advocate for the Anti-Corruption Commission that initially by dint of Memo No.DUDAK/B:Onu:O Todonto-1/59-2013-1091-1(2) dated 12.01.2014, the Anti-Corruption Commission served first notice upon the CBA leaders of Biman Bangladesh Airlines but they failed to appear before the Commission on the specified date. Thereafter, vide Memo No.DUDAK/B:Onu:O Todonto-1/59-2013/7827/1 dated 11.03.2014, another notice was served upon the said CBA leaders against which they filed a writ petition being No.3424/2014 before the High Court Division. Against the order of the High Court Division the Anti-Corruption Commission filed a Civil Petition For Leave To Appeal being No.1280/214 and the Hon'ble Judge in Chamber was pleased to stay the order of the High Court Division. On 20.01.2016, the Rule issued in the Writ Petition No.3424/2014 was dismissed for default. Finally, vide

Memo No.DUDAK/B:Onu:O Todonto-1/59-2013/21177/1(2) dated 22.05.2016, the Anti-Corruption Commission issued another notice against those CBA leaders addressing Managing Director of Biman Bangladesh Airlines to make sure of their appearance before the Commission as evident from annexures-“2A, 2B and 2C” to the affidavit-in-opposition.

Upon receiving the notice dated 22.05.2016, the notice receivers (CBA leaders) responded and submitted their statements accordingly. The Photocopies of the statements dated 30.11.2017 submitted by 1) Md. Mushikur Rahman 2) Ajharul Imam Mojumder 3) Md. Anower Hossain 4) Md. Eunus Khan 5) Md. Montashar Rahman 6) Md. Rubel Chowdhury 7) Md. Rafiqul Alam 8) Md. Abul Kalam 9) Md. Atiqur Rahman 10) Md. Harun-Or-Rashid 11) Md. Abdul Bari Lablu 12) Md. Ferojul Islam 13) Md. Abdus Shobhan 14) Most. Asma Khanam Ranu 15) Md. Golam Kaiser Ahmed 16) Md. Abdul Jabbar and 17) Md. Abdul Aziz have been produced and annexed as evident from annexures-“3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L, 3M, 3N, 3O, 3P and 3Q” “4” to the affidavit-in-opposition.

On 31.08.2016, the inquiry committee after completion of the inquiry finding no prima-facie case against the notice receivers submitted inquiry report with recommendation to close the inquiry. The Commission not being completely satisfied with the inquiry, on several occasions, asked the inquiry team to re-inquire into certain issues which they carried out and finally, on 03.01.2019, the inquiry Committee submitted its inquiry report along with the recommendation to end the inquiry. The Commission after considering the inquiry report along with other records, found out that no allegation was proved against the notice receivers and thus decided to bring the inquiry to an end and the file was accordingly kept on record as evident from annexure-“4” to the affidavit-in-opposition.

Thereafter, the final decision regarding the conclusion of the inquiry was communicated to the notice receivers in due course vide Memo No.00.01.0000.501.01.059.13-14 dated 06.03.2019 (annexure-“5” to the affidavit-in-opposition).

According to the submissions of the learned Advocate for the Anti-Corruption Commission, both the Rules have become infructuous and for the aforesaid reasons, the Rules may be discharged for ends of justice.

Conversely, Mr. Manzil Murshid, the learned Senior Advocate appearing on behalf of the petitioner has pointed out that Rules 20(4) of the Anti-Corruption Commission Rules, 2007 has provided the procedure in which the inquiry officer has been given ample power to examine Bankers book and many other documents in case of any inquiry but in the instant case, the inquiry officer, except the information supplied by CBA leaders, did not ask for any statement from any Bank and deed from different sub registry

offices and as such, it is clear that the information was not fully collected to show whether any corruption was committed or not and hence it is necessary to pass an order to hold inquiry into the allegation following the rules by way of collecting information from Bank, Sub Registry Office, Financial Institutions and other offices.

In view of the submissions and counter submissions of the respective parties and in order to come to a decision in this matter, we want to make discussion about the provisions of the Durnity Daman Commission Manual, 2018 with regard to legal requirement and questionnaire which are required to be followed at the time of inquiry/investigation into any allegation.

The Durnity Daman Commission Manual, 2018 suggests that the Anti-Corruption Commission at the time of holding any inquiry and/or investigation into any allegation, the contents of the check list attached to Durnity Daman Commission Manual, 2018 with regard to legal requirement and questionnaire must be followed. The contents of the check list with regard to legal requirement and questionnaire are quoted below:

জ্ঞাত আয় বহির্ভূত সম্পদ অনুসন্ধান/যাচাই/তদন্ত কার্যক্রমে গৃহীতব্য পদক্ষেপ সমূহের চেকলিস্ট:

১। সংশ্লিষ্ট ব্যক্তি/ব্যক্তিবর্গের সঠিক নাম, ঠিকানা, পাসপোর্ট ও জাতীয় পরিচয়পত্রের কপি সংগ্রহ করা হয়েছে কি-না? হ্যাঁ / না

২। প্রাপ্ত অভিযোগে বর্ণিত সম্পদসমূহ যাচাই করা হয়েছে কি-না? হ্যাঁ / না

৩। স্থাবর সম্পদের তথ্য:

(ক) সংশ্লিষ্ট জেলা রেজিস্ট্রার অফিস হতে-

(i) তথ্য চাওয়া হয়েছে কি-না? হ্যাঁ / না

(ii) তথ্য পাওয়া গেছে কি-না? হ্যাঁ / না

(খ) রাজধানী উন্নয়ন কর্তৃপক্ষ হতে-

(i) তথ্য চাওয়া হয়েছে কি-না? হ্যাঁ / না

(ii) তথ্য পাওয়া গেছে কি-না? হ্যাঁ / না

(গ) জাতীয় গৃহায়ন কর্তৃপক্ষ হতে তথ্য-

(i) তথ্য চাওয়া হয়েছে কি-না? হ্যাঁ / না

(ii) তথ্য পাওয়া গেছে কি-না? হ্যাঁ / না

(ঘ) চট্টগ্রাম উন্নয়ন কর্তৃপক্ষ হতে (প্রযোজ্য ক্ষেত্রে)-

(i) তথ্য চাওয়া হয়েছে কি-না? হ্যাঁ / না

(ii) তথ্য পাওয়া গেছে কি-না? হ্যাঁ / না

(ঙ) খুলনা উন্নয়ন কর্তৃপক্ষ হতে (প্রযোজ্য ক্ষেত্রে)-

(i) তথ্য চাওয়া হয়েছে কি-না? হ্যাঁ / না

(ii) তথ্য পাওয়া গেছে কি-না? হ্যাঁ / না

(চ) রাজশাহী উন্নয়ন কর্তৃপক্ষ হতে (প্রযোজ্য ক্ষেত্রে)-

(i) তথ্য চাওয়া হয়েছে কি-না? হ্যাঁ / না

(ii) তথ্য পাওয়া গেছে কি-না? হ্যাঁ / না

(ছ) রিহাব হতে-

(i) তথ্য চাওয়া হয়েছে কি-না? হ্যাঁ / না

(ii) তথ্য পাওয়া গেছে কি-না? হ্যাঁ / না

৪। অস্থাবর সম্পদের তথ্য:

(ক) বাংলাদেশ ব্যাংক হতে-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(খ) ব্যাংকসমূহ হতে-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(গ) জাতীয় সঞ্চয় পরিদপ্তর হতে-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(ঘ) ডাক অধিদপ্তর হতে-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(ঙ) বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন হতে-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(চ) ঢাকা স্টক এক্সচেঞ্জ হতে-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(ছ) চট্টগ্রাম স্টক এক্সচেঞ্জ হতে-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(জ) জীবন বীমা কর্পোরেশন/কোম্পানী হতে (প্রযোজ্য ক্ষেত্রে)-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(ঝ) রেজিস্ট্রার অফ জয়েন্ট স্টক কোম্পানিজ হতে (প্রযোজ্য ক্ষেত্রে)-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(ঞ) বাংলাদেশ সড়ক পরিবহন কর্তৃপক্ষ হতে-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(ট) বাংলাদেশ অভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষ হতে (প্রযোজ্য ক্ষেত্রে)-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

(ঠ) বাংলাদেশ বেসামরিক বিমান চলাচল কর্তৃপক্ষ হতে (প্রযোজ্য ক্ষেত্রে)-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না

৫। স্থাবর/অস্থাবর সম্পত্তির মূল্য যাচাই:

(ক) বাড়ী/স্থাপনার মূল্য যাচাই করা হয়েছে কি-না?- হ্যাঁ / না

(খ) জমির মূল্য যাচাই করা হয়েছে কি-না?- হ্যাঁ / না

(গ) অলংকারাদির মূল্য যাচাই করা হয়েছে কি-না?- হ্যাঁ / না

(ঘ) আসবাবপত্রের মূল্য যাচাই করা হয়েছে কি-না?- হ্যাঁ / না

(ঙ) ইলেকট্রিক/ইলেকট্রনিক সামগ্রির মূল্য যাচাই করা হয়েছে কি-না?- হ্যাঁ / না

(চ) যানবাহন (স্থলযান, জলযান ও আকাশ যান ক্ষেত্রমত যেমন প্রযোজ্য) যাচাই করা হয়েছে কি-না?- হ্যাঁ / না

৬। উৎস যাচাই:

(ক) সংশ্লিষ্ট ব্যক্তির চাকুরীর বেতন/ভাতাদির (প্রযোজ্য ক্ষেত্রে)-

- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না

- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না
- (খ) সংশ্লিষ্ট ব্যক্তির ঋণ গ্রহণের (প্রযোজ্য ক্ষেত্রে)-
- (i) তথ্যের সত্যতা যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- (গ) সংশ্লিষ্ট ব্যক্তির শেয়ারের লভ্যাংশ প্রাপ্তির (প্রযোজ্য ক্ষেত্রে)-
- (i) তথ্যের সত্যতা যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- (ঘ) সংশ্লিষ্ট ব্যক্তির স্থাবর/অস্থাবর সম্পদ বিক্রয় মূল্যের (প্রযোজ্য ক্ষেত্রে)-
- (i) যথার্থতা যাচাই হয়েছে কি-না?- হ্যাঁ / না
- (ঙ) সংশ্লিষ্ট ব্যক্তির আয়কর নথির (প্রযোজ্য ক্ষেত্রে)-
- (i) তথ্য চাওয়া হয়েছে কি-না?- হ্যাঁ / না
- (ii) তথ্য পাওয়া গেছে কি-না?- হ্যাঁ / না
- (চ) সংশ্লিষ্ট ব্যক্তির দান গ্রহণের (প্রযোজ্য ক্ষেত্রে)-
- (i) যথার্থতা যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- (ছ) সংশ্লিষ্ট ব্যক্তির ব্যাংক হিসাব বিবরণী-
- (i) পরীক্ষা করা হয়েছে কি-না?- হ্যাঁ / না
- ৭। জীবন যাত্রার ব্যয়:
- (ক) বিদেশ ভ্রমণের ব্যয় যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- (খ) পারিবারিক ব্যয় যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- (গ) উল্লেখযোগ্য চিকিৎসা ব্যয় (দেশ/বিদেশ) যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- (ঘ) সন্তানাদির লেখাপড়ার ব্যয় (দেশ/বিদেশ) যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- (ঙ) বিদেশ ভ্রমণের সংশ্লেষে পাসপোর্ট পরীক্ষা করা হয়েছে কি-না?- হ্যাঁ / না
- (চ) ডেবিট/ক্রেডিট কার্ড এর ব্যয় যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- (ছ) সংশ্লিষ্ট ব্যক্তির অভিজাত ক্লাব/ব্যবসায়ী সমিতির সদস্য পদের ব্যয় যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- (জ) অস্ত্রের লাইসেন্স ও অস্ত্র ক্রয়ের ব্যয় এর তথ্য যাচাই করা হয়েছে কি-না?- হ্যাঁ / না
- ৭। ফ্রোড/ফ্রিজ: ফ্রোড/ফ্রিজ করা হয়েছে কি-না?- হ্যাঁ / না
- ৮। আলামত জব্দ করা হয়েছে কি-না?- হ্যাঁ / না
- ৯। ফৌজদারী কার্যবিধির ১৬১ ধারা মোতাবেক সাক্ষীগণের জবানবন্দী লিপিবদ্ধ করা হয়েছে কি-না?- হ্যাঁ / না
- ১০। সংশ্লিষ্ট ব্যক্তিকে গ্রেফতার করা হয়েছে কি-না?- হ্যাঁ / না

On going through notices dated 12.01.2014, 11.03.2014 and 22.05.2016 upon the CBA leaders, written response of the CBA leaders in the form of statement, inquiry report dated 03.01.2019 and the notice informing end of inquiry dated 06.03.2019, it appears from the inquiry report that the inquiry was held by the Anti-Corruption Commission without collecting necessary information in line with the legal requirement and questionnaire as spelt out in the check list of the Durnity Daman Commission Manual, 2018 which are required to be followed but in the instant case, the inquiry report was submitted without collecting necessary information as per legal requirement and questionnaire as spelt out in the check list of the Durnity Daman Commission Manual, 2018 for completing the inquiry.

It is now well settled that as per Section 17 of the ACC Act, 2004, the ACC shall enquire into and conduct investigation of offences mentioned in the schedule and file cases on the basis of inquiry of investigation and conduct prosecution of the case before the Court of Special Judge.

Furthermore, the ACC is legally empowered under Section 17 to conduct any inquiry into the offences which are schedule offences of the Anti-Corruption Commission Act, 2004 so long as it attracts criminal liability and the ACC acts within the ambit of law following the provisions of laws and rules.

Moreover, the ACC has right and authority to issue notice under Section 19 of the Act, asking any person to produce documents and information and pursuant to Section 19 of the said Act, the ACC may issue the notice upon the petitioner; besides this, Section 17(c) of the Act, also empowers the ACC to start inquiry regarding any type of corruption.

On a close examination of Sections 19, 20 and 22 of the ACC Act, 2004, it is apparent that vide Section 19(1) read with Rule 20 the Commission is empowered to interrogate a person as a “witness” in connection with an inquiry or investigation; per contra, in view of Section 20 read with Section 22 read with Rule 8 of the ACC Rules, 2007, the Commission is authorized to call upon an accused, if deems necessary, in connection with an inquiry or investigation subject to providing him an adequate opportunity of hearing.

It is noteworthy to mention that as per section ১৯(১) (ক) of the Anti-Corruption Commission Act, 2004, the Commission shall have the powers in matters of inquiry or investigation against corruption to issue summons and ensure attendance of witness and ask questions to witness if required. According to section ১৯(২) of the aforesaid Act, the Commission may direct any person to furnish information relevant to enquiry or investigation and the person so directed shall be bound to furnish such information. Moreover, as per section ১৯(৩) of the Anti-Corruption Commission Act, 2004, if any person offers or causes any resistance to a Commissioner or an officer duly authorized in exercise of his power under sub-section (১) or willfully and deliberately disobeys any direction given there under, such act of the person shall be an offence punishable with imprisonment for a term not exceeding 3 (three) years or fine or with both.

Considering the facts and circumstances of the case, propositions of law and the submissions made by the learned Advocates for the respective parties, we find merit in this case.

Accordingly, both the Rule are made absolute.

In consequence thereof, inaction of the respondents to take steps as per provision of law laid down in the Anti-Corruption Commission Act, 2004 so far as it relates to disobeying the summons against the 17(Seventeen) CBA leaders, Central Committee, Biman Bangladesh Airlines, which was issued to interrogate/investigate them about corruption and irregularities in Biman Bangladesh Airlines, is declared illegal, without lawful

authority and of no legal effect as being violative of the Articles 21 and 31 of the Constitution of Bangladesh.

Further, the inaction of the respondents to interrogate the 17(seventeen) CBA Leaders and to inquire/investigate the matter on its own volition by examining the necessary papers and documents obtaining from different stakeholders like Banks, Insurances and Leasing Companies, Sub-Registry Offices or from Joint Stocks or Stock Exchanges and accordingly, prepare the inquiry report, is also declared illegal, without lawful authority and is of no legal effect.

In consequence thereof, the inquiry report dated 03.01.2019 (annexure-4 to affidavit-in-opposition dated 07.03.2021) submitted and accepted by the Anti-Corruption Commission is, set aside.

The Anti-Corruption Commission is directed to hold inquiry/investigation into the allegations afresh following the provisions of laws and rules collecting information as per legal requirement and questionnaire spelt out in the check list attached to the Durnity Daman Commission Manual, 2018, with 6(six) months from the date of receipt of this judgment and order.

Let a copy of this judgment and order be communicated to the concerned respondents, at once.
