

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

Writ Petition No. 1613 of 2019.

In the matter of:

An application under article 102 (2) 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-in-
charge and others.

..... Petitioners

-Versus-

Bangladesh represented by the Cabinet
Secretary, Cabinet Division and others.

..... Respondents

Mr. Manzil Murshid with

Mr. Ripon Barai and

Mr. Shanjoy Mondal, Advocates

. For the petitioners

**Mr. Mahbubey Alam, Attorney General
with**

Mr. Md. Noor-us-Sadik, DAG,

Mr. Mizanur Rahman, A.A.G,

Mr. Md. Zakir Hossain Masud, AAG and

Mr. Farhana Parveen Bithi, AAG

..For the Respondents No.3 and 4

Mr. Ajmalul Hossain, Senior Advocate with

Mr. Shamim Khaled,

Mr. ABM Siddiqur Rahman Khan,

Mr. Munirujzman and

Mr. Abdullah Al Hady, Advocates

. For the respondent No.6

Mr. Khurshid Alam Khan, Advocate

. . . For the respondent No.8

Mr. Shamim Khaled Ahmed, Advocate

. . . For the respondent No. 9

Mr. Md. Ehsanul Hoque, Advocate

. . . For the respondent No. 52

Mr. Shah Manjurul Haque with

Mr. Palash Chandra Roy,
Mr. Tamanna Sultana and
Mr. Sabeda Nasirn, Advocates

. . . For the respondent No. 59

Mr. Omar Sadat with

Mr. Md. Jahangir Jamaddar, Advocates

. . . . For the respondent No.21

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Md. Khairul Alam

Heard on 25.08.2019, 13.10.2019,
14.10.2019, 15.10.2019, 21.10.2019,
24.10.2019, 28.10.2019 and Judgment on
03.11.2019.

J. B. M. Hassan, J.

By filing a private interest litigation (PIL) the petitioners obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why failure/inaction of the respondents to stop various irregularities, illegalities and corruption in case of sanctioning loan and remission of interest against bank loan as occurred during the last 20 years in different private and public banks in Bangladesh and as to why failure/inaction of the respondents to recover the loan money from the loanee which was sanctioned in last 20 years by the private and public banks should not be declared to have been passed without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to stop various irregularities, illegalities and corruption in case of sanctioning loan, remission of interest against bank loan, remission of interest against bank loan and to recover the loan money from the loanee which was occurred in last 20 years in the private and public banks, Bangladesh and as to why a direction should not be given upon the respondent Nos. 1-6 to form a Commission under section 3 of the Commissions of Inquiry Act, 1956 within 30 days comprising of persons as mentioned in paragraph No.11 to inquire into various irregularities, illegalities and corruption in case of sanctioning loan and remission of

interest against bank loan as occurred during the last 20 years in different private and public banks in Bangladesh and/or such other or further order or orders passed as to this Court may seem fit and proper.”

The petitioners also obtained supplementary Rule in the following terms:

“Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the BRPD Circular No. 05 dated 16.05.2019 issued by the respondent No. 06 should not be declared to be without lawful authority and of no legal effect.”

Facts narrated in the writ petition in a nutshell are that the petitioner No.1 is a non-profit registered organization with the objects of upholding the human rights of the citizen to establish rule of law as well as good governance, to work for the poor people providing legal support to the helpless people and to build up awareness about their rights etc. The petitioners No.2-4 are involved with the activities of the petitioner No.1 and also the learned members of the Supreme Court Bar Association.

In the writ petition it is stated that the banking sector presently is in deep crisis due to increasing of default loan amount day by day and thereby this sector is facing acute liquidity crisis due to some known and unknown reasons. Political intervention in various levels, corruption and unethical practices and healthy competition among banks are further intensifying the crisis due to lack of good governance, accountability and transparency. Thus, this sector has become vulnerable to the stakeholders and others and ultimately losing the confidence of the people which may cause severe situation affecting the depositors at large and in the circumstances feeling social and personal obligation, petitioners No.2-4 along with the petitioner No.1 have filed this writ petition.

The writ petition and the subsequent affidavits in reply to the affidavits in opposition and the supplementary affidavits in opposition filed by the different respondents, reveal the petitioners’ case which are precisely as follows:

Recently, some news reports, revealed scandals in the banking sector over the past few years. In Halmark-Sonali Bank Loan scam, the largest state owned commercial bank of Bangladesh, Sonali Bank Limited got involved in financial irregularities sanctioning loan of Tk.3400 crore using scam documents between 2010 and 2012. The Basic Bank Ltd. another state owned commercial bank of Bangladesh turned into a bad bank with its about Tk. 4500 crore default loan. Besides crisis in Modhumoti Bank Ltd. and the Farmers Bank Ltd have also further intensified the present critical conditions of the banking sector. Recent news of scam of another state owned Janata Bank Ltd. with crescent and Anon Tex Group is also a new addition to the present crisis in the banking sector of Bangladesh. More, so there are similar other scams issues in several other private and public banks. According to various reports, these incidents have become banking sector woes as well as grave concern in terms of good governance in these sectors.

Center for Policy Dialogue (The CPD) in its recent report paper, namely, ‘Moving from Diagnosis to Action’ dated 8th December, 2018, depicted all the major scams of banking sectors of Bangladesh with an introduction to the effect that the banking sector of Bangladesh has expanded over the years in terms of number of formal institution, higher number of financing instruments, and bigger volumes of assets. However, the sector has been facing a number of serious challenges due to malpractices irregularities, scams and robberies and corruption. These have affected the overall performance of the sector which are reflected through various efficiency and soundness indicators. Repeated concerns have been expressed by relevant stakeholders regarding the constant deterioration of banking performance and its potential implications for the sustainability of the sector.

By the said report, the CPD focused on various banking issues mainly on performance of banking sector (i.e capital adequacy problems, non-performing loans, loss making banks, liquidity crisis in banks etc.), major scams, irregularities, and heights in banks, Cronyism in banking sector, Measures Reforms and Recommendations for Banking Sector. As per the report, the total money lost through Major Scams, irregularities and heists in banking sectors is Tk. 22502 crore which is an alarming figure for Bangladesh economy. Moreover there is no effective steps to realize those scam money from the liable persons though the lost money are public money and those incidents of irregularities actively affect the common depositors. The lost segments due to scams and irregularities, heights and corruptions in different banks are as follows:

“Sonali, Janata, NCC, Mercantile and Dhaka Bank	Tk. 5.89 crore
Basic Bank	Tk. 4,500 crore
Janata Bank	Tk. 3,547 crore
Janata Bank, Prime Bank, Jamuna Bank, Shahjalal Islami Bank and Premier Bank	Tk. 1,174 crore
AB Bank	Tk. 165 crore
NRB Commercial Bank	Tk. 701 crore
Janata Bank	Tk. 1,230 crore
The Farmers Bank	Tk. 500 crore
Bangladesh Bank	Tk. 679 crore
Total	Tk.22,502crore”

As per the news papers reports published in local national dailies, irregularities and corruption in banking sector has been a much talked event for a decade. The ‘Prothom Alo’ published reports captioning title-“এক বছরেই ৫০ হাজার কোটি টাকা পাচার (২৯.১.২০১৯), খেলাপি ঋণের নগদ আদায় কমেছে (২৮.০১.২০১৯), তদন্ত হয় অভিযোগপত্র আর দেওয়া হয় না (১৭.০১.২০১৯), শীর্ষ ২০ খেলাপীর কাছে জিম্মি সরকারী ব্যাংক (২২.০৪.২০১৮).” The Amader Samoy published reports captioning titles: “অর্থ শুধু পাচারই হয়, ফেরত আসে না (৩০.০১.২০১৯), পাঁচবছরে দিগুন ঋণখেলাপি (২৮.০১.২০১৯), জালিয়াতির তথ্য গোপন করে সুবিধা নিচ্ছে ব্যাংকগুলো (০৬.০৪.২০১৮). The Jugantor published reports captioning title: “বড় ঋণ জালিয়তেরা টাকা দিচ্ছেনা (২৪.০১.২০১৯), শেয়ার বাজারে ঋণগ্রস্থ প্রতিষ্ঠান কোম্পানীর ব্যাংক ঋণ ২২ হাজার কোটি টাকা (২২.০৪.২০১৮), রাষ্ট্রায়ত্ত্ব ব্যাংকের খেলাপি ঋণ নিয়ে গভীর উদ্বেগ (০৮.০৩.২০১৮).” The Bangladesh Protidin also

published reports captioning title: “মামলা হলেও আদায় হয় না (২১.০১.২০১৯), বেপরোয়া খেলাপি ঋণ (২১.০১.২০১৯).” The Kaler Kantho published reports captioning title: “নিজেদের মধ্যে ঋণ ভাগাভাগি ব্যাংক পরিচালকদের (২৪.০৫.২০১৮), সরকারী ব্যাংকগুলোতে খেলাপি ঋণের পরিমাণ ৫৫ হাজার কোটি টাকা,” (১৩.০১.২০১৮) and that The Banik Barta published reports captioning title: “ঋণখেলাপির কানাডা যুক্তরাষ্ট্র পাড়ি দিচ্ছেন (২২.০৪.২০১৮)” and “নদী কবরের স্থানের ভূমি বন্ধক রেখে ২৫০ কোটি টাকা ঋণ (১১.০৩.২০১৮).”

Referring to the above news reports the Global Financial Integrity (GFI) made reports to the effect that 8,175 crore dollars were siphoned out of Bangladesh in last 11 years (2005-2015). The number of loan defaulters stands as of last November , 2018 at 2,68,351 persons who are liable for Tk. 1,45,765 crore (CIB) report) and on the other hand, as on 21.01.2019 amount of default loan stands at Tk. 1,11,000.00 crore. As per said CPD report the total money lost through major scams, irregularities and heists in banking sectors is Tk. 22,502.00 crore. All these reports depicted a picture that there are huge internal and external components/ elements responsible for making the banking sectors so vulnerable, marginalized, non profitable and imbalanced.

On the other hand, news as regards concern of various experts and stakeholders have been published over the irregularities and corruption in banking sector for the purpose of removing such corruption and irregularities and establishing good governance, transparency and accountability in banking sector. The Bangladesh Protidin published a report captioning title referring to comments of four banking experts: No alternative to formation of Bank Commission (02.01.2018). The Bangladesh Protidin also published another report referring to three banking experts specifying some recommendations for the sector (21.01.2019). The Prothom Alo published another report on to formation of bank commission recommended by FBCCI (03.07.2018). The Prothom Alo also published another report captioning title: Good Governance and Discipline needed in Banking Sector (29.01.2019) and national daily, namely, the Jugantor published a similar report: Irregularities in Banking Sector, Commission not set up in three years (21.05.2018). The CPD in its report has also suggested for formation of an independent Commission for Banking Sector to critically asses the problems and weakness of the banking industry (7.2). It is evident that the experts’ reports shed focus on specific irregularities and corruption, malpractices in banking sector with some clear recommendations urgently required for the sector for its survival.

In view of the above reports it is clear that the banking sector is beset with various internal and external problems lacking good governance in the sector and so the ultimate outcome has been termed as misappropriation of public money, embezzlement, money laundering loan default, non recovery of principal and interest, remission of interest, bad loan, writing off loan, crisis in liquidity, capital inadequacy, rise in non-performing loans. mismanagement, cronyism, malpractice irregularities corruption, scandals, scams, robbery and theft in the sector. All these negative factors have

attacked the banking sector in spite of set rules, laws, regulations and policies.

To address these concern, the experts and relevant stakeholders recommended some measures to bring back good governance, transparency and accountability in the banking sector. Some of their recommendations are: i) making the Central Bank more strong and independent ii) setting up of wise and considered standard for financial issues and management of banks iii) quick remedial measures for addressing any crisis in bank sector and taking a visible steps against the responsible persons under relevant laws and administrative capacity. Some other major expert-recommendations are i) Keeping the bank sector out of political pressure ii) absence of cronyism in board of directors and independence of board of directors/management iii) stopping the rescheduling of loan frequently, iv) time frame to be limited for disposal of cases v) rigorous scrutiny of loan proposal and title and other documents while sanctioning loan vi) ensuring accountability of all the persons in banking sectors for establishing good governance and transparency vii) increasing control over the banks by the Central bank viii) strong loan recovery policy and ix) finally, formation of a bank commission, which would work for establishing good governance in bank sector.

To address the grave situation of the banking sectors to make it accountable and profitable as well as establishing good governance in the sectors. A commission under sections 3 of the Commissions of Inquiry Act, 1956 is proposed to be established for the purpose of making an inquiry into various problems and weakness of the banking sector relating to certain Terms of References (TOR) i.e misappropriation of public money, embezzlement, money laundering, loan default, non-recovery of principal loan and interest, remission of interest, bad loan, writing off loan, crisis in liquidity, capital inadequacy, mismanagement, corruption in the banking sector as occurred during the last 20 years in different private and public banks. So, as per section 3 of the Commissions of Inquiry Act, 1956, a seven member Commission may be formed comprising of the following persons who are popularly known as specialized in the subject:

- i. Dr. Mohammed Farashuddin, Former Governor, Bangladesh Bank;
- ii. Dr. Salehuddin Ahmed, Former Governor, Bangladesh Bank;
- iii. Mr. A.B Mirza Azizul Islam, former Advisor to the Caretaker Government of Bangladesh;
- iv. Mr. Khondokar Ibrahim Khaled, Former Deputy Governor of Bangladesh Bank.
- v. Mr. Mamun Rashid, Former CEO of Citibank N.A. Bangladesh.
- vi. One representative from the Bangladesh Bank not below the rank of deputy governor.
- vii. One representative from the Ministry of Finance not below additional secretary.

The commission would make detail recommendations to stop the illegalities, irregularities, corruptions and malpractice in banking sector and also recommend measures for recovery of loan amount, stopping of money

laundering and addressing weakness and problems above and also recommend guidelines for establishing over all good governance in banking sectors in Bangladesh.

There have been alarming reports for banking sector in Bangladesh that as per the above news reports 8,175 crore dollars were siphoned out of Bangladesh in last 11 years (2005-2015) Global Financial Integrity (GFI) recent report. The number of loan defaulters stand as of last November, 2018 at 2,68,351 persons who are liable for Tk. 1,45,765 crore (CIB report) and on the other hand, as on 21.01.2019 amount of default loan stands at Tk. 1,11,000.00 crore. However, CPD research depicted a report to the effect that the total money lost through major scams, irregularities and heists in recent times in banking sectors is Tk. 22,502 crore. All these reports depicted a picture that there are huge internal and external components/elements responsible for making the banking sectors so vulnerable, non-profitable, risky and corrupt.

All these incidents in the banking sector have direct affect to the depositors as well as the common people of Bangladesh since the said lost money is public money and owned by the common people. In spite of the scenario, the wrong doers responsible for the scams/irregularities have been at large under the open sky and thereby similar incidents of scams/irregularities at different banks have been occurring one after another making this sector more vulnerable and susceptible to the stakeholders and the depositors. According to various reports, these incidents have become regular in the banking sector due to lack of good governance, transparency and accountability in the banking sector.

The central bank and the other private and public commercial banks are the custodians of public money of common people of Bangladesh but the public money is not safe in banks for the stated reason. The Bangladesh Bank has power under sections 45 and 49 of the Bank Company Act, 1991 to address the situation but no stringent steps is visible. More so, the respondents did not take any positive and stringent measures so that banking sector may be saved from illegal internal and external snatchers and their gross irregularities, malpractices, corruptions and scams.

By filing subsequent affidavits, the petitioners also state that the World Bank, International Monetary Fund (IMF), Center for Policy Dialogue (CPD) separately enquired into the above situation of the commercial banks and they express their anxiety making some recommendations addressing the Bangladesh Bank. Finally by filing supplementary affidavit the petitioners also furnish terms of reference to be looked into by the proposed Bank Commission.

During pendency of the Rule the respondent No.6 issued a circular i.e Banking Regulation and Policy Department (BRPD) Circular No.05 dated 16.05.2019 introducing a scheme for rescheduling the loan and one time exit policy by the default borrowers. The petitioners filed an application in the Rule for staying operation of the said circular. After hearing the application, by order dated 21.05.2019 a direction was passed to maintain status-quo till

24.06.2019 in respect of the said BRPD Circular No.05 dated 16.05.2019 so far as it relates to rescheduling by the loan defaulters. Challenging the said interim order, the Government of Bangladesh filed Civil Petition for Leave to Appeal (CPLA) No. 1947 of 2019 before the Appellate Division which was disposed of by order dated 08.07.2019 directing this Bench to hear and dispose of the Rule. At the same time the Appellate Division also directed to continue the order of stay passed by the learned Judge in Chamber for further two months over the order of status-quo passed by the High Court Division subject to following condition:

“The persons who will be entitled to get the benefit of the disputed circular shall not get any new loan in the meantime”.

This Bench while took up the Rule for hearing the petitioners by filing an application prayed for issuance of supplementary Rule relating to the BRPD Circular No.05 dated 16.05.2019 and accordingly, a supplementary Rule Nisi was issued by this Bench by order dated 23.07.2019.

The respondents No. 3, 4, 6, 8, 9, 52, and 59 have separately filed seven sets of affidavits in opposition controverting the statements of the writ petition and the supplementary affidavits thereto including the application for issuance of supplementary Rule relating to the BRPD Circular No.05 dated 16.05.2019.

The contentions of the respondent No.8 (Anti Corruption Commission (ACC)) are that they are not necessary party relating to the issue to be adjudicated under the Rule. However, the ACC is investigating the scams which have been brought under the ACC by filing criminal cases.

The contentions of the respondent No.6 (Bangladesh Bank), *inter alia*, are that in order to manage the monetary and credit system of Bangladesh and development of the country's productive resources, Bangladesh Bank, as a regulator of the banks and financial institutions of the country, formulates necessary policies in the best national interest, conduct regular inspection and performs off site supervisions and as such takes appropriate measure as and when necessary according to laws, rules and regulations. Being the regulator of the banking sector, Bangladesh Bank deals with every issues relating to irregularities and illegalities in sanctioning and recovery of loan facilities with their efficient manpower having experiences and expertise by using the circulars from time in accordance with the Bangladesh Bank order, 1972 (P.W No. 127). The Bank company Act, 1991, The Foreign Exchange Regulations Act, 1947, the Financial Institutions Act, 1993, the Money Laundering Prevention Act, 2012 and other related laws. Besides, the Bangladesh Bank sets up a number of departments with sufficient equipments which investigate every issue of irregularities and illegalities reported to them and take action thereupon and whenever it thinks necessary send the investigation reports to the appropriate state owned authorities for further investigation as well as for taking legal actions including court proceedings and thus formation of the inquiry commission in this field is not necessary in the present circumstances.

It is the regulatory responsibility of the Bangladesh bank to work on every issues that affect the monetary policy of the country and in order to do that it formulates and implements the policies by issuing circulars and guidelines giving appropriate instructions either to all banks in general or a particular bank/company whenever necessary depending on the condition of the financial sector following internationally accepted standard i.e BASEL recommendations in this regard. The Bangladesh Bank occasionally intervenes in the money market and the foreign exchange market to maintain liquidity and exchange rate in order to ensure financial stability and soundness of the sector. The growth of lending and deposits in the year ended in 2018 indicates that people have not lost their confidence in the banking sector of the country.

Though financial scam is a regular phenomenon in the global financial system, Bangladesh has also experienced such scams and irregularities in banking system like Hallmark scam, Anon Tex scam, Crescent Group scam, Irregularities of Basic Bank and Farmer's Bank etc. In all those financial irregularities, Bangladesh Bank investigated into and prepared reports and sent them to the Ministry of Finance, the Anti-Corruption Commission (ACC), Criminal Investigation Department (CID) and the Bangladesh Financial Intelligence Unit (BFIU) as the case may be for further investigation and taking appropriate measures including legal actions against the perpetrators as per relevant laws of the land. The Bangladesh Bank also instructed the Board of Directors of the bank companies to take appropriate administrative action against the employees responsible for the irregularities and it has taken measures to prevent those incidents to be occurred in future by introducing online monitoring system to monitor foreign exchange transaction and integrates this monitoring system with the banks and Customs Authority. The Bangladesh Bank has also introduced core banking software and improved monitoring system and its integration and there by the bank managements have controlled more over their operation of banking which will drastically reduce the incidence of banking scams/frauds in future.

Bangladesh Bank has been working closely being associated with the ACC, CID, the concerned Ministries and other departments of the Government in order to get rid of malpractices, corruption in the sector. The lender banks and companies take shelter of the Artha Rin Adalat Ain, 2003 as well as the Negotiable Instrument Act, 1881 to recover the outstanding loan liabilities and the Bangladesh Bank has taken measures recently with the help of the Law Commission to reform those Acts with a view to fortify the Court for recovery of the said money. Since recovery procedure under the legal framework is unanimously availed by the banks and the companies, formation of a commission of inquiry to address those issues shall contradict with and have adverse impact on the regulatory functions of the Bangladesh Bank.

There are sufficient laws and institutions in the country to deal with the default loans, frauds money laundering issues and the bank and financial institutions always take assistance of those laws and institutions for this

recovery of the default loans. The Bangladesh Bank, whenever identifies an issue of fraud, it instructs the concern bank as well as the ACC to take legal action and also whenever they find the issue related to laundering of money they refer to the incident to the BFIU for investigation and taking legal action. Since laundering of money happens nationally and internationally, the BFIU being the Central Intelligence Unit of Bangladesh works in joint collaboration of other countries through signing agreement with many countries of the world.

The recommendations made in the relevant paragraph of the writ petition may be taken for consideration by the government as well as the regulator Bangladesh Bank for the betterment of the banking sector and thus there is no need to form the enquiry commission to that effect. Bangladesh Bank is accountable to the parliament under article 38A of the Bangladesh Bank Order, 1972 where the Governor of the Bank has to appear before the parliamentary Committee on finance to report on the monetary policy and of other activities of the bank and to answer the questions at least once a year and as such formation of an inquiry commission may prevent smooth functioning of the regulator Bangladesh Bank and also may cause harm to the banking industry as a whole and as such formation of the inquiry commission may reduce the confidence on the integrity of banking system in the mind of the people.

The BFIU formed under section 24 of the Money Laundering Prevention Act, 2012 has been working as the central Intelligence Unit of the Country to investigate into, prepare reports and sent those to the ACC for taking legal action as per laws of the country. According to BFIU report, other government authorities like NBR, Ministry of Home Affairs and the office of the learned Attorney General are working together on money laundering issues and thus the Bangladesh Bank thinks that they are capable enough to handle the issues raised in the writ petition being associated with government departments, agencies and institutions.

The Government may if thinks appropriate and necessary appoint a commission of enquiry for inquiring into a particular case of public importance in the spirit of section 3 of the Commission of the Inquiry Act, 1956 and since the subject matter as alleged in the writ petition is not definite, commission of inquiry is not suitable to be formed to address those vast incidences. The Bangladesh Bank being authorized by the prevailing laws of the country takes necessary measures including investigation, legal actions, adopting new policies issuing circulars, directions, suggestions, notifications, conduct meetings and provide verbal instructions to address all the issues mentioned in this writ petition as well as other issues not addressed herein for ensuring safety of the public deposits in the banks.

Section 49(1)(cha) of the Banking Companies Act, 1991 empowered the Bangladesh Bank as the regulator of banks and financial institutions to direct them by issuing circulars for making loan classifications and preserving provisions, waiving, rescheduling and reconstruction of the loan liabilities and thus by the given power, the respondent bank has issued the present

impugned circular lawfully in the interest of the safety of the money of the depositors. Under section 45 of the Bank Company Act, 1991 as well as article 74 of the Bangladesh Bank Order, 1972 the Bangladesh Bank has been given power to issue directions as it deems fit, to banking companies generally or to a particular banking company in the public interest for improvement of monetary policy to prevent any banking policy detrimental to the interest of the depositors or to secure proper management of any banking company etc. and from that perspective, the Bangladesh bank issues direction making the banking companies bound to comply with.

The Bangladesh Bank has issued the circular No. 05 dated 16.05.2019 as a technique for recovering the defaulted and classified money from the borrowers by which the respondent has offered some privileges to the defaulter borrowers by simplifying the payment method of the outstanding amount and as such the circular is a perspective one that will bring exceptional consequences by recovering the defaulted loan amount from the defaulter borrowers. The impugned circular no.05 has made the access to payment simpler to the loan defaulters by reducing the down payment up to minimum 2% of the outstanding dues and that it has been done in the interest of the public money because a large number of defaulters kept huge amount of money of the depositors unpaid and for recovering that amount the path of access to pay has been made easier by offering them some simple gateways. Making down payment minimum 2% is nothing but to attract the defaulters to pay their outstanding money by making an easy access that is lawful as well as treated as an effective measure of recovering loan amounts. The circular has been published with intent to encourage the genuine defaulters making the hurdles easier and further, no new opportunity is made in the circular for the defaulters to take more or further or new loans without availing/following the existing procedure of laws and circulars of the Bangladesh Bank and thus, the impugned circular will be able to bring the expected results in the finance sector.

In order to motivate the borrower to come forward to adjust loan Bangladesh Bank also issued BRPD Circular No.04 dated 16.05.2019 introducing incentive to the tune of 10% of interest waiver. Bangladesh Bank also issued BRPD Circular No.06 dated 22.07.2019 introducing guidelines for monitoring default loan of 100 crore and above availed from the schedule banks. It has developed the monitoring systems taking initiative to receive online statements through its web portal. To prevent Hallmark types fraud, Bangladesh Bank has developed online reporting system for all types of cross border foreign exchange transactions including foreign exchange transactions through inland back to back letters of credit. This is expected to stop the scams in export and import. To establish good governance in banks and financial institutions certain measures have been taken as part of going process, Bank Company Act, 1991 was amended up to 2018. The duties, responsibilities and area of function of the Board of Directors and management have been clarified. In the last 6 years Bangladesh Bank refrained themselves from giving approval to 35 candidates for the posts of directors in different banks and removed the incumbents by invoking section

17 of Bank Company Act, 1991 as amended and posts of several directors of banks concerned fell vacant. A high powered committee headed by a Deputy Governor of Bangladesh Bank has been formed to arrest loan default position. Proposal has been made for further amendment of Bank company Act, 1991 for introduction of measures against willful and habitual loan defaulters.

The Bangladesh Financial Intelligence Unit (BFIU) as respondent No.9 in its affidavit in opposition states that section 24 of the Money Laundering Prohibition Act, 2012 has created Bangladesh Financial Intelligence Unit (the BFIU) as a statutory authority headed by a person having status of the Deputy Governor of Bangladesh Bank for addressing all sorts of dubious monetary transactions and the BFIU has been given ample authority for the purpose of proper implementation of the relevant laws. Besides, the government has recently made Money Laundering Prohibition Bidhimala, 2019 where a high power Committee, namely, মানি লন্ডারিং ও সন্ত্রাসী কার্যে অর্থায়ন ও প্রতিরোধে জাতীয় সমন্বয় কমিটি has been formed.

The BFIU is functioning as an independent body established with the object of preventing money laundering and financing in terrorism as per the provisions of Money Laundering Prevention Act, 2012 and Santrash Birodhi Ain, 2009. In discharging functions, The BFIU prepared a report dated 30.07.2019 as per direction of the Hon'ble Court on siphoning of money and foreign exchange already from this country and steps taken to bring those siphoned off money and foreign exchange back to the Country. The BRPD Circular No.05 dated 16.05.2019 issued by the Banking Regulation and policy Department of the Bangladesh Bank is beyond the functions and activities of the BFIU and therefore, it is not in a position to make any comment on the issuance of the BRPD Circular No.05 dated 16.05.2019.

Affidavits in opposition separately filed by the respondents No. 3 and 4 are more or less similar and hence precisely described herein below:

The writ petition regarding allegation of loan scam involving some banks are subjudice matter. Because, in connection with each and every allegations, the ACC has filed cases and some of which are now under trial and some of which are now under investigation. So the allegations of loan scam have been well addressed by the statutory mechanisms. Therefore, the petitioners have no cause for filing writ petition narrating those facts. Regarding the report published by the CPD, namely, 'Moving from Diagnosis to Action' dated 08.12.2018 is an expressed view of a non-government organization which is not undisputed and the activities of the CPD are not acceptable to the all corner of people since it represents view of a particular group. Moreover, the allegations made in the report have already been addressed by the concerned statutory authority and most of the allegations are now subjudice after conclusion of investigation by the ACC. So, such a disputed report can not be basis for filing a Public interest Litigation (PIL).

Newspaper reports regarding allegations of defaulted loans are under strict surveillance of the Bangladesh Bank. The government as well as the

Bangladesh Bank have taken various steps from time to time for combating the defaulted loans but sometimes due to political unrest, international financial recession, natural calamity and other reasons which are beyond control of the statutory mechanism, the initiatives taken by the government and the Bangladesh Bank did not get expected success. Consequently, the government has to change its policy time to time on the basis of demand of the entire economy which is absolutely the policy domain of the government. But such an issue cannot be resolved under judicial review. The newspaper reports based on some experts' view for setting up a bank commission for the purpose of securing good governance and discipline in banking sector are not undisputed. That the government is also intending to form a commission for the purpose of modernizing the entire banking sector and thereby to ensure accountability and transparency of that sector more perfectly. But it is completely a policy matter of the government and it will be implemented with due process and it can never be a subject matter of public interest litigation. Proposing the names of some people for forming a commission under section 3 of the Commission of Inquiry Act, 1956 is absolutely misconceived inasmuch as it is the government's prerogative to select the persons for the purpose of forming such commission and the petitioners cannot choose the persons for such purpose.

The respondent No.59, Bangladesh Association of Banks (BAB), in their affidavit in opposition state that the legislative authorities regarding banking sector have been taking proper initiatives considering the guidelines and opinion of the World Bank, IMF, other donor agencies and in accordance with guidelines of Basel-III. Being a sovereign state, Bangladesh considers the recommendation of international organizations and other donor agencies keeping in mind the highest benefit of the country. So writ petitioners have no cause for filing writ petition as a PIL seeking direction for forming of banking Commission as well as challenging legality of BRPD Circular No.05 dated 16.05.2019. The Government and other concern authorities of banking sector as well as the answering respondent have been working for strengthening the entire banking and financial sector relentlessly. The petitioners have filed the writ petition on the basis of a report /study published by the CPD on 8th December, 2018 under heading of 'Banking Sector in Bangladesh moving from Diagnosis to Action'. The said report/study was prepared on secondary information i.e there was no field work in connection with the said study and the CPD has relied upon the sources of information provided by some other agencies which includes newspapers and other media reports. Without having any primary source of information, such reports cannot be considered as true picture of the banking sector. In the said report, the CPD has admitted that against the scams, irregularities and heists of the banks, the ACC and Bangladesh Bank have taken legal actions. The CPD also admitted that some major legal reforms have been done by the Bangladesh Bank for addressing the issues of corruption and other illegal activities in Banking sector. So the report itself has admitted that the irregularities, corruptions and illegalities are not

untouched and due to the legal reforms, possibility of such kind of corruption and illegalities will be combating in future.

The writ petitioners are by no means stake holders of banking sector and they are not deprived by any service of any banking company. Moreover, they do not represent any group who are not able to come before this Hon'ble Court in connection with their grievance regarding any allegation involving with the banking sector. Consequently, the petitioners do not have any *locus-standi* for filing the writ petition as a public interest litigation. The writ petition has been filed seeking a direction for appointment of a commission under the Commissions of Inquiry Act, 1956 to inquire into various irregularities, illegalities and corruption in connection with sanctioning of loan and remission of interest against bank loan as occurred during last 20 years in different private and public bank Bangladesh seeking of such direction is absolutely misconceived. Because, the ACC Act, 2004 is a special law having overriding effect upon any other law and that corruption is a scheduled offence under the ACC Act, 2004, By virtue of sections 2(Uma), 2Ka, 17 and Schedule of the ACC Act, 2004; no other authority except the ACC is capable to inquire into the allegations of corruption. So, seeking a direction for forming a commission under a general law is not tenable in the eye of law. Moreover, various cases have been filed by the ACC in connection with specific allegations of corruption and dubious loan transactions which are now subjudice and for that reason, there is no scope of interference in that matter by the High Court Division under writ jurisdiction. The appointment of a commission is absolutely policy matter of the government and forming of such commission in connection with allegations of corruption cannot be done under the present legal framework.

The banking sector is mainly dealt with the following laws:

- (a) Bangladesh Bank Order, 1972 (P.O No. 127 of 1972)
- (b) Bank Company Act, 1991
- (c) Financial Institutions Act, 1993
- (d) ব্যাংক আমানত বীমা আইন, ২০০৩
- (e) Artha Rin Adalat Ain, 2003
- (f) The Bankers Book Evidence Act, 1891
- (g) Financial Reporting Act, 2015
- (h) Micro Credit Regulatory Authority Act, 2006
- (i) Money Laundering Prevention Act, 2012
- (j) Anti terrorism Act, 2009
- (k) Foreign Exchange Regulations Act, 1947.

Besides, the following Rules have been made under the said laws:

- (a) Financial Institutions Rules, 1994
- (b) Anti-Terrorism Rules, 2013
- (c) Money Laundering Protirodh Rules, 2019

Bangladesh Bank through its several departments have been issuing circulars from time to time for addressing day to day affairs of banking and financial sector as well as for implementing policy of the Government and its own as

well. Moreover, due to various international treaties, conventions and recommendations of International Organizations and other donor agencies, Bangladesh Bank have been issuing circulars regularly for making necessary regulatory changes in the banking sector. So, there is no justification of forming another commission for addressing the problems of banking sector. Sections 20-28A of the Bank Company Ain, 1991 have provided various restrictions upon the directors and other employees of Bank Company in dealing with credit and other facilities. If any transaction happens violating those provisions, the particular persons involved therewith, will be punished and the said transaction will be considered void. So, both the Bangladesh Bank Order, 1972 and the Bank Company Ain, 1991 have provided stringent provisions for dealing with banking section of Bangladesh. Consequently, formation of new commission for banking sector is quite irrelevant and unnecessary for addressing problems (if any) of that sector, rather, the proposed commission will be a conflicting body and will create a chaotic situation.

Currently, there are as many as 59 schedule banks and 34 financial institutions in Bangladesh and out of those banks and financial institutions, only 5/6 are facing problems of scam. So, the entire banking and financial sector cannot be blamed for some irregularities took place in 5/6 banks and the financial institutions. Moreover, Bangladesh Bank as well as the ACC and the management of the said particular banks have taken necessary legal actions against the persons involved with the scams.

The Southeast Bank Limited as respondent No.52 by filing an affidavit in opposition supports the contentions of the respondent No.59.

After placing the writ petition and the other materials on record including the application for issuance of the supplementary Rule, Mr. Manzil Murshid, the learned Advocate for the petitioners has drawn our attention to various paper clippings containing reports of the World Bank, the IMF and the CPD. Referring to those reports, he submits that huge irregularities, corruption, scandals and scams have been detected in the banking sector relating to loan default, money laundering, non-recovery of the principal loan, remission of interest affecting the depositors at large and the said money are the public money owned by the citizens. Despite the Bangladesh Bank and other relevant Government agencies are not taking proper steps to prevent those disorders which prompted the petitioners to file this writ petition in order to draw attention of this Court for issuing an appropriate writ of mandamus.

He further submits that section 3 of the Commissions of Inquiry Act, 1956 (the Inquiry Act) incorporates the provision for appointing Commission of inquiry for the purpose of making an inquiry into any definite matter of public interest and as such, the issues revealed in various paper clippings and reports relating to mismanagement in the banking sector have to be inquired by appointing a Commission. Despite petitioners' approaches to the Government, till now the Government has not appointed any Commission in this regard. Therefore, a direction may be given upon the respondents to appoint a Commission in accordance with section 3 of the Act, 1956.

Mr. Murshid also submits that although the Bangladesh Bank is empowered to address the aforementioned situations in accordance with sections 45 and 49 of the Bank Company Ain, 1991 and the Bangladesh Bank Order, 1972 (the Bangladesh Bank Order, 1972) but no effective steps are visible from the Bangladesh Bank or any other responsible respondents so that the banking sector may be saved from illegal internal and external snatches and from their gross irregularities, corruptions and scams.

Relating to the supplementary Rule, Mr. Murshid has drawn our attention to the impugned BRPD circular No.05 dated 16.05.2019 and referring to some clauses thereof, he submits that although the circular was issued for realization of borrowers' default loan but it creates discrimination to the regular payee borrowers by giving some extra benefits to the habitual and willful defaulter borrowers and thereby moral hazard would be appeared among the regular payee borrowers as well as depositors at large and as such, the circular so far as it relates to rescheduling of loan is liable to be interfered under judicial review of this Court. He again submits that earlier in the year 2015, the Bangladesh Bank issued a restructuring circular in favour of the loan defaulters having more than 500 crore liability and that the benefits given by the said circular was for once. The defaulted borrowers after availing said benefit again defaulted and now in connivance with the Bangladesh Bank procured the impugned BRPD circular in the garb of rescheduling under special scheme. He next submits that the impugned circular was published in order to frustrate the Rule issued in this writ petition for adjudicating allegations of defaulting loan and mismanagement therein. Therefore, the total action of the Bangladesh Bank in issuing the BRPD circular is malafide and liable to be interfered by this Court.

Referring to the requirements for making application for rescheduling he further submits that it has created discrimination between master circular for rescheduling and the impugned BRPD circular inasmuch as certain special privileges have been given by the impugned circular to the habitual and willful defaulters and the respondent banks shall have the scope of pick and choose by using the terms bank-client relationship mentioned in the impugned circular and so it is arbitrary and unreasonable. In support of submissions, Mr. Murshid refers to the case of Kailash Chand Sharma Vs State of Rajsthan and others reported in 6 SCC page 562, the case of Bangladesh, represented by the Cabinet Secretary, Cabinet Division, Bangladesh Dhaka and others Vs Md. Aaur Rahman and others reported in 69 DLR (AD) 17. However, Mr. Murshid, does not challenge the 2nd part of the impugned circular so far as it relates to one time exit.

Mr. Mahbubey Alam, the learned Attorney General appears for the respondents No. 3 and 4, Mr. Ajmalul Hossain the learned Senior Advocate with Mr. ABM Siddiqur Rahman Khan, Mr. Munirujjzman and Mr. Abdullah Al Hady, the learned Advocates appear for the respondent No.6, Mr. Shamim Khaled Ahmed, the learned Advocate appears for the respondent No. 9, Mr. Md. Asenul Hoque, the learned Advocate appears for the respondent No. 52, Mr. Shah Manjurul Haque with Mr. Palash Chandra

Roy, Ms. Tamanna Sultana, and Mr. Sabeda Nasirn, the learned Advocates appear for the respondent No. 59, Mr. Khurshid Alam Khan, the learned Advocate appears for the respondent No.8 and Mr. Omar Sadat, the learned Advocate appears for the respondent No.21.

Although the learned Advocates appearing for the above mentioned respondents submitted independently but gist of their submissions appear more or less similar as to merit of the Rule and hence, their submissions are summarized herein below:

- (i) The petitioners have no locus standi to file this writ petition in view of the ratio laid down in the case of National Board of Revenue Vs Saeed Khan and others reported in 18 BLC (AD) 116. Therefore, the writ petition is not maintainable.
- (ii) The writ petition itself does not contain any basis as to petitioners' grievance and thus, no legal rights were accrued in favour of the petitioners either by the impugned circular or for seeking mandamus for constituting Bank Commission.
- (iii) It is the Government's direction for appointing Commission under section 3 of the Inquiry Act, 1956 and as such the petitioners can not seek mandamus before this Court for appointing Bank Commission.
- (iv) The Commission is a fact finding body. But there is no specific fact either stated in the writ petition or supplementary affidavit including the terms of reference as supplied by the petitioners by way of affidavit. As such, question of constitution of Commission does not arise over the described scenario.
- (v) The specific scams which have been mentioned by the petitioners are all under investigation by the Anti Corruption Commission (ACC) and in the meantime at the instance of the Bangladesh Bank a number of measures have been taken in order to recovery of laundered the money. Therefore, if the bank Commission is appointed, the aforementioned investigations and actions against those scams shall be interrupted.
- (vi) The impugned BRPD circular No. 05 has been issued for the public interest in order to recovery of loan (public money) and it being a Government policy, the petitioners can not seek any relief for interference over the said policy.
- (vii) The Bangladesh Bank has the authority to issue the BRPD circular in question in accordance with the authority vested in it under sections 45 and 49 of the Bank-Company Act, 1991.
- (viii) Master Circular is a general circular deals with all kinds of defaulter borrowers and the Circular No.05 dated 16.05.2019 is applicable for a special group of borrowers who became defaulter due to some reasons beyond control. The ground of discrimination in a judicial review can be entertained only when the discrimination is done between the same groups of people.

Here, Bangladesh bank has made reasonable classification among the borrowers and consequently, the grounds of discrimination between the BRPD circular No. 05 and Master circular No. 15 has no manner of application in the instant Rule.

Mr. Khorshed Alam Khan, the learned Advocate appearing for the ACC submits that the issue involved in the Rule are not related to the ACC. Moreover, the ACC is proceeding with the mentioned scams in accordance with the relevant laws and therefore, there is no failure on the part of the ACC as alleged by the petitioners in their writ petition.

The learned Advocate appearing for the respondent No.52 has adopted the submissions as advanced by other respondents.

In support of their submissions, the learned Advocates for the respondents have referred to the cases of National Board of Revenue Vs Abu Saeed Khan and others reported in 18BLC (AD) 116, Gazipur Paperboard limited Vs Bangladesh Bank and others reported in 21 BLC (HCD) 451, Peoples Union for Democratic Rights Vs Ministry of Home Affairs reported in AIR 1985, (DELHI) 268 and the case of Vijay Mehta Vs State of Rajasthan reported in AIR 1980 (RAJ) 207.

We have gone through the writ petition, 7 (seven) sets of affidavits in opposition separately filed by the respondents No. 3,4,6,8,9,52 and 59, the supplementary affidavits thereto, the relevant laws, cited cases and other materials on records.

Maintainability of the writ petition being raised questioning locus standi of the petitioners, we have gone through the uncontroverted statements made by the petitioners wherein we find that the petitioner No.1, a non profit registered organization has in the meantime filed a good number of cases on public interest litigation before this Court as well as before the Appellate Division and obtained a good number of judgments in its favour i.e for the interest of public at large, finding merit on the issues raised by this petitioner. The subject matter of the instant Rule relating to public money lying with the banks is also involved with the interest of the citizens at large. Therefore, we are of the view that the petitioner No. 1, a public spirited organization has expressed its grievances relating to the issues in question and the petitioners No. 2-4 are involved with the activities of petitioner No.1. Thus, all the petitioners have got locus standi to file the writ petition and so, the writ petition is quite maintainable within the purview of clauses No. 1, 4, 6 and 7 of the cited case of National Board of Revenue Vs Abu Saeed Khan and others reported in 18 BLC (AD) 116.

Now let us proceed to the merit of the Rule. The submissions as advanced by the contending parties and in view of Rule and the supplementary Rule, basically two issues have appeared before us for adjudication. **Firstly**, appointment of Bank Commission under section 3 of the Act, 1956 to enquire into the allegations relating to sanctioning loan, remission of interest and for recovery of loan money by the private and public banking companies for the last 20 years and **secondly**, the propriety of issuance of BRPD

circular No. 05 dated 16.05.2019 so far as it relates to rescheduling defaulted loan sanctioned by the banks.

To decide **the 1st issue**, let us first read the relevant provision i.e section 3 of the Act, 1956 which runs as follows:

“3(1) The Government may, if it is of opinion that it is necessary so to do, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.”

(Underlined by us)

On perusal of the aforesaid provision it appears that the Government may appoint a Commission if it feels necessary for the purpose of making inquiry into a definite matter of public importance. Three expressions reflected in the provision i.e “Government may, if it is of opinion that it is necessary so to do”, “definite matter” and “public importance”, are very relevant to settle the dispute between the parties as to whether this Court can issue a writ of mandamus directing the respondents to appoint a Bank Commission to inquire into the allegations as brought in the writ petition.

Mr. Hossain, in this regard, emphatically submits that the writ petition does not contain any definite matter for inquiry except for some mentioned scams which are already under investigation by the ACC and other government authorities.

To appreciate his submission, we have also gone through the terms of references furnished by the petitioners to be inquired by the proposed Bank Commission. It is to be kept in mind that the Inquiry Commission is mere a fact finding body. From the terms of reference furnished by the learned Advocate for the petitioners as we find that except for the serial No.2, all other proposed terms of reference are not definite and also related to research oriented and requiring suggestions for development of banking sector and that serial No.2 although involves to a factual aspect but it being related to all loan accounts of taka one crore and above in all the government and privates banks of the country, the number of cases would be so voluminous that it is not feasible for the Commission to detect any illegality or irregularities in all those loan cases by way of scrutinizing records of each cases.

Mr. Hossain next submits that formation of Commission is a discretion of the Government as the legislature used the expression “Government may, if it is of opinion that it is necessary so to do”, so, even if, the matter appears definite and it involves public importance, nevertheless, it is the Government’s discretion to appoint a Commission. In support of his submission, Mr. Hossain refers to the cases of AIR 1985 (DELHI) 268 and AIR 1980 (Raj) 207. Although in this regard, Mr. Murshid referes to a number of examples as to forming Commission in different countries of the world, but Mr. Hossain submits that those were done at the instance of the

Government and that according to him there is no case in our jurisdiction regarding appointment of Commission under the Act, 1956 except for the case reported in 2009 BLD 29 but this case is not applicable here having its distinguishable facts.

The provision relating to inquiry commission in India is under section 3(1) of the Commission of Inquiry Act, 1952 and language of this provision of section 3(1) is as follows:

“3. Appointment of Commission.-- (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided.....”

(Underlines supplied by us)

Although, in this provision there are two options to the Government i.e. the Government itself may appoint Commission and secondly, by the resolution of the parliament the Government shall appoint Commission. In interpreting the said provision, the Indian High Court Division held that constitution of inquiry Commission is Government’s direction but when parliament takes resolution, it is incumbent upon the Government to constitute inquiry Commission. In our country section 3(1) of the Inquiry Commission Act, 1956 incorporates provision alike the first option of the Indian provision.

In those Indian cases cited by Mr. Hossain, ratio was settled to the effect that due to use of the word “may” it is the Government’s discretion to appoint inquiry Commission under the said Act and accordingly in those cases the Court refused to issue direction upon the Government to appoint inquiry Commission. However, in the case of AIR 1985 (DELHI) 268 the High Court Division in explaining the provision held as under:

“A Commission may be appointed by the appropriate Government if it is of the opinion that it is necessary so to do. This opinion is, by the words, even if there is any definite matter of public importance, the appropriate Government may not appoint a Commission of inquiry if it is of the opinion that it is not necessary so to do that in enquiry under the Commissions of Inquiry is not a judicial inquiry and the object of constituting a Commission of Inquiry under the Act is to enable the Government to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or implement the beneficial objects it has in view. Is is merely a fact finding body for the benefit of the Government and that is why even where there may be a definite matter of public importance, a Commission of Inquiry is appointed under the said Act only if it is necessary, in the opinion of the appropriate Government, to do so.....”

Although, Mr. Murshid has cited a case of our jurisdiction reported in 2009 BLD (HCD) 29 wherein the High Court Division directed the Government to appoint an inquiry Commission. But in the said case, as we find in paragraph No.4 of the judgment that the Government by filing affidavit in opposition also consented to appoint inquiry Commission and thereby the present case is distinguishable with that case. For better appreciation of the issue relevant paragraph 4 of 2009 BLD (HCD) 29 is quoted herein below:

“সরকার পক্ষের দাখিল কৃত এফিডেভিট ইন অপজিশান এর প্রতি দৃষ্টি আকর্ষণ পূর্বক তিনি আবেদন করেন যে, বাংলাদেশ সরকারও সংশ্লিষ্ট সময়ে সংঘটিত বিভিন্ন সহিংস ঘটনাবলী ও নির্যাতন মূলক ঘটনাবলীর জন্য একটি তদন্ত কমিশন গঠন করিবার জন্য সক্রিয়ভাবে বিবেচনা করিতেছেন বিধায় তিনিও এইরূপ একটি তদন্ত কমিশন গঠন করিবার প্রার্থনা করেন যাহাতে চিহ্নিত দুষ্কৃতকারীগণের শাস্তি বিধান হইতে পারে। অন্যথায় লজ্জিত মানবতা ও ন্যায় বিচার পুনরুদ্ধার হইবে না এবং সংবিধানে মানবাধিকার নিশ্চিত করিবার যে অঙ্গীকার রহিয়াছে তাহা ভুলুগ্ঠিত হইবে। আমাদের প্রশ্নের উত্তরে বিজ্ঞ ডি, এ, জি বলেন যে দরখাস্তকারী পক্ষের উক্ত প্রার্থনা সম্বন্ধে সরকার পক্ষ কোন আপত্তি উত্থাপন করিতেছে না। ”

(Underlined by us)

Thus, from the language expressly incorporated in the provision of section 3 of the Act, 1956 it is clear that the object of appointing a Commission of Inquiry is to enable the Government to decide as to what legislative or administrative measures should be adopted to remove the wrongs or to implement the beneficial objects on consideration of report of inquiry. In other words, the Commission of Inquiry is only a fact finding body for the benefit of the Government when there is a definite matter of public importance. A Commission of Inquiry may be appointed if it is necessary in the opinion of the Government to do so. Under section 3 of the Act, 1956 the Government is not under a statutory obligation to appoint a Commission of Inquiry even on a definite matter of public importance. Regard being had to the above, we are led to hold that to appoint a Commission for any particular definite purpose even though it involves public importance, is a discretion of the Government.

Further, from the affidavits which have been filed by the respondents including ACC, it is clear that the Government including the Bangladesh Bank are taking necessary action/steps relating to scams, specifically mentioned in the writ petition. If no action would have been taken by the concerned authorities then there may have been some justification for the Court to issue such directions to the respondents. The intervention of the Court by passing any order, is therefore neither desirable nor called for at this stage. If in any particular case, there is any action or inaction on the part of the Government or the Bangladesh Bank with regard to the grant of any relief, then the persons aggrieved can always approach the Courts of law for appropriate relief. Therefore, this Court is not inclined to direct the Government to appoint a Commission in the banking sector in accordance with section 3 of the Act, 1956.

However, the power of the High Court while exercising its jurisdiction under article 102 of the Constitution is very wide. Relating to action or inaction of the executives in violation of any law, rule, order and infringement of

fundamental rights, if brought to the notice of the Court, the High Court Division has the power to issue appropriate directions or orders as and when the situation arises. Even, where no statutory provision is violated but the action or inaction of the State/Government/Executives is arbitrary or malafide then, as has now been well settled by our apex Court, the said action or inaction is interfereable under article 102 of the Constitution. Therefore, whenever the Court feels on account of action or inaction on the part of the state, the Court will exercise its jurisdiction under article 102 of the Constitution. Thus, under article 102 of the Constitution this Court has the ample authority to issue directives, when a particular issue has appeared before the Court with a notice of Government's or executive's action or inaction on that particular issue. In particular, the High Court Division itself can also appoint Commission or Committee in order to have the materials to come to proper conclusion and decision.

There is no gainsaying that blood is the integral part of the body and smooth blood circulation maintains healthy body. Money is the life blood of the economy and so, smooth money circulation maintains healthy and sustainable economy. Blood circulation is controlled by the heart while money circulation is controlled by the banks. Therefore, banks act as the heart of money circulation and as such, to have a healthy and sustainable economy, we need a healthy banking sector.

Our economy is now at a very large scale than that of the period of 20 years back. Due to expansion of volume of economy numbers of banks have been increased and at the same time banking activities have also been increased in the trading and industrial sectors both locally and internationally. Therefore, to meet the developing situation in commercial sectors, the banking policies have to be modernized with the passage of time.

It is indisputable that recently some sensational financial scams have been detected with a few commercial nationalized banks. In particular, the Hall Mark Group scams, Basic Bank Scams, Bismillah Group scams etc. But it is appreciable that specific measures have been taken by the Government organs including the Bangladesh Bank and that the Anti Corruption Commission are investigating those scams. But we have to think and analyze over those scams in order to stop recurrence of those incidents. Many economists and former bankers are thinking over the matters which have been reflected in various newspapers including the reports of the IMF and the World Bank. The Bangladesh Bank as a regulatory body of the banking and financial sectors should not brush aside those reports and news.

Although the Bangladesh Bank in their affidavit have stated about their various attempts and steps taken in this regard but it is not enough in the context of present growing economy of our country and on many occasions the Government high ups of the concerned sector felt reformation of banking sector and it has also been reflected in the affidavit in opposition filed by the respondents No.3 and 4, in particular, the Government is thinking over the banking sector. It is to be kept in mind that all the banks are doing business having the depositors' money i.e. public money and so their management

including Board of Directors must be transparent and also have to be accountable to the regulatory body.

In the circumstances, on consideration of all the materials available on records, this Court is of the view that the Bangladesh Bank with the coordination of the Government, shall constitute a nine member committee by the banking experts of different banks and financial institutions to find out the loopholes in sanctioning loan and recovery thereof by all the private and public banks and also their management including board of directors, recruiting process, service control and accountability of the high officials of the private banks to the Bangladesh Bank. All the banks are directed to take clearance/approval from the Bangladesh Bank in promoting and or recruiting and removing from service of top five officials in their respective institutions in addition to existing law/rules. In the said Committee, the Bangladesh Bank may also include former bankers and renowned economists of the country.

The second issue for our adjudication is to determine propriety of BRPD Circular No.05 dated 16.05.2019. At the very outset, Mr. Murshid, the learned Advocate submits that the petitioners do not have any grievance relating to 2nd part of the BRPD circular No.05 dated 16.05.2019 i.e. relating to one time exit scheme given under the said circular. Therefore, we are only looking into the 1st part of the said circular so far as it relates to rescheduling the default loan. To appreciate the submissions of the contending parties in this regard, let us first scan the circular relevant portions of which run as follows:

“ঋণ পুনঃতফসিল ও এককালীন এক্সিট সংক্রান্ত বিশেষ নীতিমালা।

বিভিন্ন নিয়ন্ত্রণ বহির্ভূত কারণে ব্যবসায়ী/শিল্প উদ্যোক্তাগণ ক্ষতিগ্রস্ত হওয়ায় ব্যাংকের ঋণ অনেক ক্ষেত্রেই নিয়মিতভাবে পরিশোধিত হচ্ছে না এবং সংশ্লিষ্ট ঋণ বিরূপভাবে শ্রেণিকৃত হয়ে পড়ায় ঋণ বিতরণ ও আদায় কার্যক্রম বাধাগ্রস্ত হচ্ছে। এ প্রেক্ষিতে, উৎপাদনশীল খাতসহ অন্যান্য খাতে স্বাভাবিক ঋণ প্রবাহ বজায় রাখাসহ ব্যাংকিং খাতের বিরূপভাবে শ্রেণিকৃত ঋণ নিয়মিতভাবে আদায়ের লক্ষ্যে কতিপয় সিদ্ধান্ত গ্রহণ করা হয়েছে।

১। খাত/উপখাতঃ নিম্নোক্ত খাত/উপখাতের যে সকল ঋণ ৩১ ডিসেম্বর ২০১৮ তারিখে মন্দ/ক্ষতিজনক মানে শ্রেণিকৃত রয়েছে সে সকল ঋণগ্রহিতার অনুকূলে ব্যাংকার-গ্রাহক সম্পর্কের ভিত্তিতে পুনঃতফসিল/এক্সিট সুবিধা প্রদান করা যাবে:

ক) ট্রেডিং খাত (গম, খাদ্য দ্রব্য, ভোজ্যতেল ও রিফাইনারী), জাহাজ শিল্প (শিপ-ব্রেকিং ও শিপ-বিল্ডিং) এবং লৌহ ও ইস্পাত শিল্প যেখানে ব্যাংকের বিপুল অংকের বিনিয়োগ রয়েছে;

খ) বিশেষায়িত ব্যাংকের অকৃষি খাতের আমদানি-রপ্তানিতে সম্পৃক্ত শিল্প ঋণ; এবং

গ) অন্যান্য খাতে ব্যাংক কর্তৃক বিশেষ নিরীক্ষার মাধ্যমে চিহ্নিত প্রকৃত ব্যবসায়ী যাদের ঋণ নিয়ন্ত্রণ বহির্ভূত কারণে মন্দ/ক্ষতিজনক মানে শ্রেণিকৃত হয়েছে।

২। ঋণ পুনঃতফসিল সংক্রান্ত শর্তাবলী: অনুচ্ছেদ-১ এ বর্ণিত ঋণগ্রহিতাদের মন্দ/ক্ষতিজনক মানে শ্রেণিকৃত ঋণ নিম্নবর্ণিত শর্তাদি পরিপালন সাপেক্ষে পুনঃতফসিল করা যাবে:

(ক) পুনঃতফসিল সুবিধা গ্রহণের জন্য নির্ধারিত সময়ের মধ্যে ঋণগ্রহিতার আবেদন প্রাপ্তির পর ব্যাংক কর্তৃক ৩১ ডিসেম্বর ২০১৮ তারিখ ভিত্তিক হিসাবকৃত স্থিতি মোতাবেক কার্যক্রম গ্রহণ করতে হবে;

(খ) ঋণ স্থিতির ন্যূনতম ২% হারে ডাউন পেমেন্ট নগদে গ্রহণ করতে হবে। ইতোপূর্বে সংশ্লিষ্ট ঋণের বিপরীতে আদায়কৃত কিস্তির অর্থ ডাউন পেমেন্ট হিসেবে বিবেচনা করা যাবে না;

(গ) এ সার্কুলার জারীর তারিখ হতে ৯০ (নব্বই) দিনের মধ্যে ঋণগ্রহিতা কর্তৃক আবেদন করতে হবে। এ সময় অতিক্রান্ত হলে কোন আবেদন গ্রহণযোগ্য হবে না;

- (ঘ) কেইস টু কেইস বিবেচনায় ঋণ পরিশোধের সময়কাল সর্বোচ্চ ০১ (এক) বছরের গ্রেস পিরিয়ডসহ সর্বোচ্চ ১০ (দশ) বছর হবে;
- (ঙ) ব্যাংকার-গ্রাহক সম্পর্কের ভিত্তিতে অনারোপিত সুদের সম্পূর্ণ অংশ এবং Interest Suspense A/C-এ রক্ষিত সুদ মওকুফ করা যাবে। তবে, মওকুফকৃত সুদ পৃথক ব্লকড হিসাবে (সুদবিহীন) স্থানান্তর করতে হবে। পুনঃতফসিলের শর্তানুযায়ী সম্পূর্ণ ঋণ পরিশোধের পর ব্লকড হিসাবে রক্ষিত সুদ চূড়ান্ত মওকুফ হিসেবে বিবেচিত হবে;
- (চ) ঋণ স্থিতির (মওকুফ অবশিষ্ট) উপর কস্ট অব ফান্ড + ৩% হারে সুদ প্রযোজ্য হবে। তবে সুদের হার ৯% এর মধ্যে সীমিত রাখতে হবে। ১ জানুয়ারি ২০১৯ তারিখ হতে উক্ত হারে সুদ আরোপ কার্যকর হবে;
- (ছ) ব্যাংকার-গ্রাহক সম্পর্কের ভিত্তিতে মাসিক অথবা ত্রৈমাসিক কিস্তি নির্ধারণ করতে হবে। প্রচলিত নিয়মানুযায়ী আনুপাতিক হারে আসল এবং সুদ বিবেচনায় নিয়ে কিস্তির পরিমাণ নির্ধারিত হবে;
- (জ) ঋণ পরিশোধের জন্য ৯ টি মাসিক কিস্তির মধ্যে ৬ টি মাসিক কিস্তি অথবা ৩ টি ত্রৈমাসিক কিস্তির মধ্যে ২ টি ত্রৈমাসিক কিস্তি অনাদায়ী হলে এ সুবিধা বাতিল বলে গণ্য হবে এবং সংশ্লিষ্ট ঋণহিসাবকে মন্দ/ক্ষতিজনক মানে শ্রেণিকরণ করতে হবে;
- (ঝ) ব্যাংক কর্তৃক পুনঃতফসিল সুবিধা প্রদানের তারিখ হতে ৯০ (নব্বই) দিনের মধ্যে ব্যাংক ও গ্রাহক সোলেনামার মাধ্যমে চলমান মামলার কার্যক্রম স্থগিতের জন্য যথাযথ আইনানুগ পদ্ধতি অনুসরণপূর্বক প্রয়োজনীয় ব্যবস্থা গ্রহণ করবে। পরবর্তীতে কোন গ্রাহক প্রদত্ত সুবিধার কোন শর্ত ভঙ্গ করলে তার অনুকূলে প্রদত্ত সকল সুবিধা বাতিল বলে গণ্য হবে এবং গ্রাহকের বিরুদ্ধে স্থগিত মামলা পুনরুজ্জীবিত করতে হবে; এবং
- (ঞ) পুনঃতফসিল পরবর্তীতে ব্যাংকার-গ্রাহক সম্পর্কের ভিত্তিতে ব্যাংক কর্তৃক নতুন করে ঋণ প্রদান করা যাবে। এক্ষেত্রে ব্যাংক সর্বোচ্চ সতর্কতার সাথে তাদের প্রচলিত ঋণ নীতিমালা অনুসরণ করবে। নতুনভাবে প্রদত্ত ঋণ যথানিয়মে পরিশোধে ব্যর্থ হলে এ সার্কুলারের আওতায় প্রদত্ত সকল সুবিধা বাতিল বলে গণ্য হবে।”

(Underlines supplied by us)

Mr. Hossain submits that this circular has been issued for the public interest and the Bangladesh Bank have the authority to issue such circular in pursuance of sections 45 and 49 of the Bank Company Act, 1991 and that the petitioners do not dispute the authority of the Bangladesh Bank to issue this circular or the process of issuance of this circular. The petitioners' grievance only to the contents of the circular which is a disputed question of fact as to whether it is good or bad for the public and this dispute can not be adjudicated by way of writ petition. He also submits that the circular does not create any discrimination as it was issued on a special situation for a limited period in order to rescue a group of good borrowers who defaulted to repay due to reasons beyond control and for the interest of the national economy, the Bangladesh Bank issued the circular for a particular period.

To assail his submission, Mr. Murshid frankly concedes that there is no dispute as to process of issuance of circular as well as the authority of the Bangladesh Bank in issuing this circular. But he submits that under special situation when this Court issued Rule in this writ petition to examine the loan defaulting crisis in the banks of the country and when the defaulter borrowers stopped to repay the loan under the BRPD circular restructuring defaulted loan issued in the year 2015, on such circumstances, with a malafide intention in connivance with the Bangladesh Bank, the defaulter

borrowers have managed to issue this discriminatory circular introducing more advantages and benefits than the regular payee borrowers.

To appreciate their contentions, we have perused the preamble of the aforesaid circular where the following words have been mentioned:

“বিভিন্ন নিয়ন্ত্রন বহির্ভূত কারণে ব্যবসায়ী/শিল্প উদ্যোক্তাগণ ক্ষতিগ্রস্ত হওয়ায় ব্যাংকের ঋন অনেক ক্ষেত্রেই নিয়মিতভাবে পরিশোধিত হচ্ছে না।”

In clause 1 of the said circular it appears that certain particular classes of borrowers are mentioned in sub clauses ‘(ক)’, ‘(খ)’ and ‘(গ)’ who are only allowed to avail this scheme on the basis of bank-customer relationship. Here on consideration of overall business situation both local and abroad and also economy of the country, the Bangladesh Bank has identified the certain business sectors as mentioned in sub clauses ‘(ক)’ and ‘(খ)’ of clause 1 of the circular who suffered business loss beyond control due to global economy. For other sectors under sub clause ‘(গ)’ the circular has also required the concerned bank to conduct a special audit relating to business of applicant to be done after filing application depositing 2% down payment in order to identify the real businessmen who were classified due to suffering loss in business for the reasons beyond control.

Thus, from the very words “ব্যাংকার-গ্রাহক সম্পর্কের ভিত্তিতে” and the aforementioned sub clauses, it is apparent that the circular is a special scheme for a particular classes of borrowers who have according to the Bangladesh Bank (regulatory body) and or the concerned bank faced loss in their business for the reasons beyond control and that the rescheduling and its tenure depends absolutely on the banker-customer relationship within highest 9+1=10 years. It is mentionable that on failure to continue repayment of installments in accordance with clause 2 (জ) of the impugned circular, the rescheduling benefit shall be cancelled and the borrower shall again be classified. Further, at the same time of issuing impugned circular, the Bangladesh Bank issued BRPD Circular No. 04 dated 16.05.2019 introducing incentive to the tune of 10% of interest waiver to motivate the borrowers to come forward to adjust the loan. Thus, considering above, we hold that the impugned circular does not create any discrimination between the regular payee borrowers and the willful defaulter borrowers and that due to introduction of incentive to the regular payee borrowers, no moral hazard would appear to the good borrowers.

Therefore, we are of the view that the Bangladesh Bank having its authority considering all aspects of the banking sector has issued the said BRPD circular No. 05 for the interest of national economy involved with the banking sector for recovery of defaulted loan money. Whether it is for the betterment of the depositors or not, is a disputed question of fact which can not be decided here and it is purely Bangladesh Bank’s policy in dealing with the process of loan recovery from the defaulted borrowers under a special circumstances.

In fact, it is a bailout (capital injection) programme to support the defaulted borrowers who suffered business loss for the reasons beyond control and in

the developed countries including USA, EU this concept is well accepted and that using this concept the developed countries on many occasions could be able to address their existing financial crisis. Considering the above, the cases cited by Mr. Murshid are not applicable in this particular case in view of its distinguishable facts.

Moreover, the banks are supposed to question against this BRPD circular along with the petitioners but no bank company has come forward before the Court against the said impugned circular and that respondent No. 59 the Bankers Association of Bangladesh is rather supporting the said BRPD circular. Besides, the affidavit filed by the Bangladesh Bank shows that the process for issuance of the circular was initiated in June, 2018, long before issuance of the Rule in this writ petition and so the allegations of Mr. Murshid that in order to frustrate the present Rule, the circular was issued, is not acceptable under the above situation.

Lastly, Mr. Murshid has drawn our attention to the clause ২(৬) and ২(৭) of the impugned circular and submits that discrimination has been made to the regular payee borrowers by reducing interest rate for the habitual and willful defaulter borrowers who will be more benefitted by this circular fixing interest rate maximum 9%. In this connection, Mr. Shah Manjurul Haque, the learned Advocate for the Bankers Association by filing affidavit states that the banks are in the process of reducing interest rate and very shortly the interest rate would be reduced within one digit relating to all credit facilities.

From various reports, we find that due to high interest rate on credit facilities of the banking sector, the borrowers are facing financial hardship in repayment of loan and thereby the consumers at large, have to pay higher costs on the products. Mr. Murshid submits that the bank owners have been promising for a longtime to reduce interest rate to single digit and that appreciating such decision the Government has also provided various facilities to the banks including deposit of Government fund, reducing provision rate etc. Considering the above, this Court is of the view that the commercial banks both state owned and private, should reduce the interest rate on credit facilities from double digit to single digit.

Mr. Murshid again submits that the master circular for rescheduling defaulted loan provides some conditions for getting new loan facility but those are not mentioned in the impugned circular. Thus, there being no precondition in the present impugned circular in getting new loan, the defaulted borrowers by way of 2% down payment after rescheduling their liability, shall again get the benefit of borrowing money making a gross discrimination with the other borrowers and thereby moral hazard shall be encouraged among the regular payee borrowers and ultimately public money will be at stake.

In this regard, we have gone through the master circular for loan rescheduling i.e BRPD circular No. 15 dated 23.09.2012 wherein the following clauses have been incorporated providing certain conditions relating to new loan facility after rescheduling:

“06. NEW LOAN FACILITY AFTER RESCHEDULING:

a) The borrower whose credit facility has been rescheduled may avail a new loan facility or enhance existing credit facility subject to fulfillment of the following conditions:-

i. The borrower must pay at least 15% of the “Outstanding Balance” (outstanding amount after excluding the down payment on rescheduling) to avail any further credit facility from the rescheduling bank.

ii. In case of borrowing from other banks, the same rule will be applicable, i.e. the borrower must pay at least 15% of the “Outstanding Balance” (outstanding amount after excluding the down payment on rescheduling), then, will be allowed to take regular facility from other banks subject to the submission of No Objection Certificate (NOC) from the rescheduling bank or financial institution.

b) Exporters may be granted further credit facility (after being identified as not-a-willful defaulter), if required, subject to settling at least 7.5% of the “Outstanding Balance” (outstanding amount after excluding the down payment on rescheduling). They will be allowed to take the regular facility from other Banks subject to the submission of a NOC from the rescheduling bank or financial institution.

c) Prior approval of Bangladesh Bank shall have to be obtained if the loan is related to the director of any bank.

d) Information on such rescheduled loan accounts shall be reported to the Credit Information Bureau (CIB) of Bangladesh Bank.

e) While reporting to the CIB, the rescheduled loans/ advances should be shown as RS-1 for first time rescheduling, RS-2 for second time rescheduling and RS-3 for third time rescheduling. If rescheduling facility is availed through interest waiver, reporting should be RSIW-1 for first time rescheduling, RSIW-2 for second time rescheduling and RSIW-3 for third time rescheduling.

f) Number of rescheduling should be mentioned in the sanction letter as well as in the date column of sanction/last renewal/rescheduling in the basic CL form as RS-1/RS-2/RS-3 or RSIW-1/ RSIW-2/ RSIW-3.”

Finally, Mr. Morshid submits that for the interest of depositors, no further loan should be granted to the defaulted borrowers who avail benefit of the impugned circular. But in this regard, Mr. Hossain submits that in order to keep the wheel of economy running, if further financing to the borrowers are stopped, the circular would not be effective and thereby purpose of issuing circular would be frustrated. We find substance in the submission of Mr. Hossain, but at the same time this Court is of the view that to avail the new loan by the borrowers who will avail benefit of the impugned circular, they have to comply with the conditions as mentioned in clause 6 of the BRPD circular No. 15 dated 23.09.2012 alongwith the clause 2 (৳) of the impugned circular No. 05 dated 16.05.2019.

Regard being had to the above, we are not inclined to interfere with the BRPD circular No.05 dated 16.05.2019 subject to direction regarding sanction of new loan after rescheduling and other observations.

Since from the very beginning of issuing of the circular the matter is pending before the Court and at the same time the circular was issued for a particular period, the Bangladesh Bank may keep operation of the circular for an extended period not more than 90 days.

With the above observations and following directions the Rule is disposed of.

(i) The Bangladesh Bank with the coordination of the Government, shall constitute a nine member Committee within 90 (ninety) days from the date of receipt of the judgment and order, by the banking experts of different banks (In the said Committee, the Bangladesh Bank may also include former bankers and renowned economists of the country), to identify the loopholes in sanctioning loan and recovery thereof by all the private and public banks and also relating to their management including board of directors, recruiting process, service control and accountability of the high officials of the private banks to the Bangladesh Bank. The Committee will also prepare guidelines/suggestions regarding prudential banking, management, risk management and internal control. The Bangladesh Bank shall take support from the instructions and recommendations to be made by the aforementioned 9 (nine) member committee.

(ii) The Board of Directors of all the banks are directed to take clearance/approval from the Bangladesh Bank in promoting and or recruiting and removing top five officials in their respective institutions.

(iii) In granting new loan after rescheduling under clause 2 (৭) of the present circular No.5, the concern bank company shall follow the clause 6 of the BRPD Circular No.15 dated 23.09.2012.

In pursuance of the of the Court order dated 30.04.2019 the list of borrowers submitted by the Bangladesh Bank is returned in sealed condition to Mr. Munirujzman, the learned Advocate for the Bangladesh Bank.

Communicate a copy the judgment and order to the respondents at once.

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