

Chapter 5

PROHIBITION

5.1 Meaning

Prohibition means to stop the inferior court, tribunal or authority performing function of the Republic to act in excess or abuse of jurisdiction. Writ of prohibition filed not to exceed jurisdiction. In view of article 102 of the Bangladesh Constitution which is as follows:

“The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law

- (a) on the application of any person aggrieved, make an order
- (i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do.”

5.2 Development of Prohibition

In *MGH Infocomm v. Bangladesh*,¹ the High Court Division held that a combination of both timely judicial intervention and consequential administrative prudence in action and decision as has in the past produced beneficial results for the petitioner in containing the No Objection Certificate (NOC) as stated earlier and not losing sight of the significance of the precedents as have duly addressed the petitioners plight earlier, this court finds no reason to argue with the petitioner’s submission that in keeping with the regulatory practice that has gained currency it would not be well within the authority of the respondent to issue NOC with regard to the channels as specified and in the instant writ this court is of the view that it would not indeed, be overreaching itself or acting in

¹ 59 DLR (2007) 13.

excess of its authority to probe into the nature and scope of the respondents statutory duty in a writ of mandamus as this. In that regard there is no doubt in the mind of this court that this application constitutes one under article 102(a)(i) for an order directing a person performing any function in connection with the Republic to do that which he is required by law to do.

In *Global Access Ltd. v. Bangladesh*,² the High Court Division held that the Governor and Deputy Governor of Bangladesh Bank are members of the Board of Directors of Security printing corporation (Bangladesh) Limited. They do not perform any function of the company for or on behalf of the Bangladesh Bank. They merely discharge their duties as members of Board of Directors of the company and while they discharge their duties and functions, they do not discharge such duties and functions in connection with the affairs of the Republic of any local authority. So, their action cannot be challenged under article 102(2)(a)(i) of the Constitution.

In *Senpujanrai v. Collector of Customs*,³ when a collector of customs imposed an invalid condition for the release of gold on payment of fine in lieu of confiscation, a writ was issued prohibiting the customs authorities from enforcing the invalid condition.

In *S. M. Shakil Akter v. Rabeya Khatun and others*,⁴ it was held that RAJUK has got no authority to demolish the structure legally constructed and oust an allottee from any allotted land in the manner as has been done in the present case.

In *Md. Amirul Islam v. Bangladesh*,⁵ the Court gave the verdict that the petitioner was charged without showing any reason for the charge. The provision of the Police Officers (Special Provisions) Ordinance, 1976 (as amended in 1994) are found to be discriminatory. In the instant case the petitioner was unheard and as such impugned order of discharge was without lawful authority. The respondents were directed to reinstate the petitioner in his former post and allow him to continue in service with all attending benefits within 30 days from the date of receipt of a copy of this judgment.

² 55 DLR (2003) 433.

³ AIR 1958 SC 845.

⁴ 6 BLC (AD) 48.

⁵ 15 BLT 2007 (HCD) 197.