

14. We also find that section 33 of the Ain, 2003 has provided, the alternative provisions for disposing of the judgment-debtor's property towards satisfaction of the decretal dues. In this process, if the Adalat fails to hold the auction in pursuance of the section 33(1)-33(4) of the Ain, 2003, the law empowers the Adalat to issue certificate of possession in respect of the property under section 33(5) of the Ain, 2003 and that the decree-holder taking possession and control over the property, can sell it following the provisions of section 33(1)-33(4) of the Ain, 2003. Besides, on the prayer of the decree-holder, the Adalat can issue certificate of title in favour of the decree holder in respect of the property as provided in section 33(7) of the Ain, 2003 following the conditions as laid down in the said sub-section.

Therefore, the Adalat is not obliged to sell the property in any manner or at any price for satisfaction of the decree, particularly when the decree holder specifically raises objection to the highest offer being abnormally low and that the amount is too inadequate to satisfy the decretal dues.

15. In view of the above discussions, we are led to hold that the Adalat committed error of law, apparent on the face of the record, in passing the impugned order dated 27.10.2005 and as such, it warrants interference by this Court.

In the result, the Rule is made absolute in part. The order dated

27.10.2005 passed by the Adalat (respondent No.2) in Mortgage Execution Case No. 123 of 2003 (Annexure-C/1 to the supplementary affidavit of the writ petition) is hereby declared to have been passed without lawful authority and is of no legal effect.

No costs.

The ad-interim order of stay stands vacated.

Communicate the judgment and order to the respondent No. 2 expeditiously.

HIGH COURT DIVISION (Special Original Jurisdiction)

Md. Ashfaul Islam—J.

And

Md. Ashraful Kamal—J.

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

WRIT PETITION NO. 1322 of 2010

With

WRIT PETITION NO. 7318 of 2010

WRIT PETITION NO. 7316 of 2010

WRIT PETITION NO. 7317 of 2010

WRIT PETITION NO. 6240 of 2009

WRIT PETITION NO. 7814 of 2012

WRIT PETITION NO. 7831 of 2012

WRIT PETITION NO. 7832 of 2012

WRIT PETITION NO. 7833 of 2012

WRIT PETITION NO. 7834 of 2012

WRIT PETITION NO. 15367 of 2012

WRIT PETITION NO. 15662 of 2012

WRIT PETITION NO. 15665 of 2012	GTS Logistic International Ltd.
WRIT PETITION NO. 6862 of 2011 Petitioner.
WRIT PETITION NO. 11135 of 2013	(In writ petition No. 6862 of 2011).
WRIT PETITION NO. 11136 of 2013	Seagold Supply Chain Management
WRIT PETITION NO. 11137 of 2013	Ltd. Petitioner.
Freight Management Limited	(In writ petition No. 11135 of 2013).
..... Petitioner.	Harbour Logistics (Pvt.) Ltd.
(In writ petition No. 1322 of 2010). Petitioner.
SG Logistics (Pvt.) Limited	(In writ petition No. 11136 of 2013).
..... Petitioner.	Fastway Global Logistics Bd (Pvt.)
(In writ petition No. 7318 of 2010).	Ltd. Petitioner.
Expolanka Bangladesh Limited	(In writ petition No. 11137 of 2013).
..... Petitioner.	Vs.
(In writ petition No. 7316 of 2010).	Bangladesh Bank and others
SDV Bangladesh (Pvt.) Limited Respondents.
..... Petitioner.	For the
(In writ petition No. 7317 of 2010).	petitioner (In
Wings Air Cargo Limited	W.P. No. 1322
..... Petitioner.	of 2010, 6240
(In writ petition No. 6240 of 2009).	of 2009, 7831
EBD Limited	of 2012, 7832 of
..... Petitioner.	2012, 7833
(In writ petition No. 7814 of 2012).	of 2012, 7834
Solidan Marine Ltd. Petitioner.	of 2012, 15665
(In writ petition No. 7831 of 2012).	of 2012, 6862
NIB Trans Lines Ltd. Petitioner.	of 2011, 11135
(In writ petition No. 7832 of 2012).	of 2013, 11136
Awards Transportation Ltd.	of 2013, 11137
..... Petitioner.	of 2013)
(In writ petition No. 7833 of 2012)	: Mr. Masud-R-
Aryan Freight Lines Limited	Sobhan, Advocate
..... Petitioner.	with Mrs. Fatema S.
(In writ petition No. 7834 of 2012).	Chowdhury,
Novo Aviation Services Ltd.	Advocate.
..... Petitioner.	For the
(In writ petition No. 15367 of 2012).	petitioner (In
Multi Freight Ltd	W.P. No. 7318
..... Petitioner.	of 2010, 7316
(In writ petition No. 15662 of 2012).	of 2010, 7317
Corporate Transport	of 2010, 7814
..... Petitioner.	of 2012)
(In writ petition No. 15665 of 2012).	: Mr. Tanjib-ul-Alam,
	Advocate.

For the petitioner (In W.P. No. 15367 of 2012, 15662 of 2012)

: Dr. A.K.M. Ali, Advocate with Mr. Habib-Un-Nabi, Advocate.

For the respondent (In W.P. No. 1322 of 2010, 7318 of 2010, 7316 of 2010, 7317 of 2010, 6240 of 2009, 7814 of 2012, 7831 of 2012, 7832 of 2012, 7833 of 2012, 7834 of 2012, 15367 of 2012, 15662 of 2012, 15665 of 2012.)

: Mr. Forrukh Rahman, Advocate.

For the respondents (In W.P. No. 6862 of 2011)

: Mr. Shamim Khaled Ahmed, Advocate.

For the Respondents

: Mr. S. M. Moniruzzaman, D.A.G with Ms. Khairun Nessa, Ms. Promila Biswas, A.A.Gs.

Judgment: February 23, 2014.

Guidelines for Foreign Exchange Transactions of Bangladesh Bank-

Section 8(1) of chapter 22- It is established Law that in order to get a Rule of mandamus petitioners must show their legal claim is rooted in the statute and it is a mandatory requirement that the applicant for mandamus should have a legal specific right to enforce the performance of those duties and when any statutory duty imposed upon any public bodies in that case mandamus can be granted against the public bodies for performing the public duties.

Since, admittedly the petitioners are not carriers; therefore, this section has no manner of application to them.

It is a well settled principle of law that in order to get a Rule of mandamus the petitioners must show that their claim is rooted in the statute or statutory Rule.

So, it has always required that the applicant for a mandamus should have a legal specific right to enforce the performance of those duties.

In the case of Queen v. Guardians of the Lewisham Union, reported in (1897) 1 QB 498 it was observed;

"This court would be far exceeding its proper functions if it were to

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assume jurisdiction to enforce the performance by public bodies of all their statutory duties without requiring clear evidence that the person who sought its interference had a legal right to insist upon such performance.” (Para 29)

In the case of Talekhal Progressive Fisherman Co-operative Society Ltd. Vs. Bangladesh and others reported in 1981 BLD (AD) 103 wherein it has been observed:

“In order to entitle a person to ask for performance of any public duty by mandamus it is necessary to show that he has a legal right for claiming such performance part from the fact that he is interested in the performance of the duty.”

The case of National Engineers vs. Ministry of Defence reported in 44 DLR (AD) (1992) 179 our Apex Court held thus:

“In order to enforce the performance by public bodies of any public duty by mandamus, the applicant must have a specific legal right to insist upon such performance “.

A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the public bodies and there is a failure on the part of those public bodies to discharge their statutory obligations. The paramount func-

tion of a writ is to compel performance of public duties prescribed by statute and to keep public bodies exercising public functions within the limits of their jurisdiction. Therefore, mandamus may issue to compel the public bodies to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. (Para 30)

JUDGMENT

MD. ASHRAFUL KAMAL—J: Since in these 17(seventeen) Writ Petitions, common questions of fact and law are involved, those are heard and disposed of by this single Judgment.

2. In Writ Petition No. 1322 of 2010 a Rule Nisi was issued calling upon the respondents to show cause as to why the requirement that a Master Bill of Lading i.e. second Bill of Lading inserting the name of the bank as Authorized Dealer (AD) as consignee instead of the petitioner's or it's designated agent's name as consignee being beyond the guidelines contained in section 8(1) of Chapter 22 of the Guidelines for Foreign Exchange Transactions of Bangladesh Bank (Annexure-C) should not be declared to have been passed without lawful authority and is of no legal effect.

3. Brief facts, necessary for the disposal of these Rules, are as follows;

The petitioners are Freight Forwarders and have been engaged in Freight Forwarding business. They obtained licenses as per provisions of the Freight Forwarding Agents (Licensing and Administration) Rules 2008 pursuant to section 207 of the Customs Act, 1969.

4. The petitioners as freight forwarding agents export goods to their destinations on behalf of the exporters and issues bill of lading known as house bill. The shipper issues master bill of lading on the basis of house bill prepared by a freight forwarding agent and endorsed by the bank.

5. At present, in Bangladesh, it is a mandatory provision that the house bill of lading issued by the freight forwarding agent and the master bill of lading issued by the carrier has to be endorsed by the concerned bank/authorized dealer.

6. Being aggrieved by and dissatisfied with the aforesaid mandatory requirement of the respondents with regard to the house bill of lading issued by the freight forwarding agent and the master bill of lading issued by the carrier and required to be endorsed by the concerned bank/authorized dealer, the petitioners preferred these writ petitions and obtained the present Rules.

7. In all the petitions it is the clear and specific claim of the petitioners that the respondents ought to give permission to them to ship consignment

as agents of the exporters on the basis of bill of lading (house bill of lading) issued by the petitioners and endorsed by the bank/ authorized dealer and without endorsing the master bill of lading issued by the carrier.

Mr. Masud-R-Sobhan, with Mrs. Fatema S. Chowdhury, the learned Advocates appearing for the petitioners in W.P. No. 1322 of 2010, 6240 of 2009, 7831 of 2012, 7832 of 2012, 7833 of 2012, 7834 of 2012, 15665 of 2012, 6862 of 2011, 11135 of 2013, 11136 of 2013 and 11137 of 2013, Mr. Tanjib-ul-Alam, the learned Advocate appearing for the petitioners in W.P. No. 7318 of 2010, 7316 of 2010, 7317 of 2010 and 7814 of 2012, and Dr. A.K.M. Ali, with Mr. Habib-Un-Nabi, the learned Advocates appearing for the petitioners in W.P. No. 15367 of 2012 and 15662 of 2012, submit that the house bill of lading issued by the freight forwarding agent endorsed by the bank would suffice and the consignment can be released by the freight forwarding agent on production of bank endorsed house bill and other shipping documents. The carrier can simply issue the master bill of lading against the consignment and inform the relevant parties about the particulars of the master bill of lading without bank endorsement which is known as telex release of the consignment.

8. They further submit that when a freight forwarding agent books a space for shipment of the consignment of the single importer abroad where a num-

ber of exporters are involved, then each exporter has to have two bills of lading endorsed by the banks/authorized dealer (AD) and the difficulties that are now being faced, in case of multiple exporters if all the shipment documents are not presented for delivery of the consignment at the destination port, the release of the entire consignment is held up.

9. Moreover, in respect of multi-shipment by several exporters to the same importer through one freight forwarding agent can be avoided if there is only one title document of the consignment, if only the house bill is treated as the title document for which the exporter and the agent would be fully responsible along with the carrier for the goods destination. The requirement to have the master bill of lading endorsed by the bank served no useful purpose and imposition of such a requirement violates the fundamental rights guaranteed under Article 40 of the Constitution of Peoples Republic of Bangladesh.

10. Finally, they submit that section 8(i) of Chapter 22 of the Guidelines for foreign exchange transaction issued by the Bangladesh Bank does not require two bills of lading and the present requirement of endorsing both the bills of lading by the authorized dealer, which is beyond its own guidelines for foreign exchange transaction and is contrary to the practice of the international trade and as such a declaration is necessary that it is not a mandatory

requirement and the petitioner is not bound by it.

11. Mr. Shamim Khaled Ahmed, the learned Advocate appearing for the respondents in W.P. No. 6862 of 2011, Mr. Forrukh Rahman, the learned Advocate appearing for the respondents in W.P. No. 1322 of 2010, 7318 of 2010, 7316 of 2010, 7317 of 2010, 6240 of 2009, 7814 of 2012, 7831 of 2012, 7832 of 2012, 7833 of 2012, 7834 of 2012, 15367 of 2012, 15662 of 2012 and 15665 of 2012 submit that the circulation of two sets of bill of lading of which the further one (house bill of lading) is endorsed to the order of authorized dealer and the later one (Master Bill of Lading) is issued in favour of delivery agent not only violates the foreign exchange guideline but also creates confusion. There cannot be two bills of lading for same consignment for same mode of transport. This will encourage practice of fraud. Issuance of master bill of lading by carrier would make null and void any prior bill of lading. House bill received for shipment bill is applicable to transportation before shipment. For transportation by sea, the master bill of lading shall be applicable.

12. They also submit that the bill of lading/airway bill means shipped/on board bill of lading issued by carrier (ship-owner/airline), connotes a conclusive evidence of shipment. The freight forwarders cannot execute any contract of carriage by sea/air as they are not carrier for the purpose of

transport by sea/air. The guideline is issued within the power vested in Bangladesh bank under section 20(3) of FERA 1947. Guideline is issued for ship-owner/airline as carriers for sea or air leg of transport. FCR (Forwarder cargo receipt) or HAWB (house airway bill) only relates to land leg of transport, it cannot cover sea/air, hence cannot be negotiable beyond shipment for not being a title document after shipment.

13. They further submit that due to faulty export documents particularly bill of lading, the importers or its nominated bank often reject goods and/or after receiving goods refused to make payment and due to the same faulty documents, mostly bill of lading, the cargo as exported often are lost in transit. Allowing carrier to issue master bill of lading to the delivery agent of freight forwarder or to its order would actually put the freight forwarder in control of the cargo and also make it the lawful owner of the cargo. This would pave the way for committing fraud and also create confusion to the parties involved, as the bank would be holding house bill of lading at the same time believing that it is holding the true bill of lading. Hence two bills of lading cannot be in circulation at the same time. Issuance of separate master bill actually rescind the earlier bill for the same transport.

14. Moreover, the BGMEA informed the respondents that they received lots of complaints from its members

against freight forwarders in that due to faulty export documents particularly bill of lading, importers refusal to make payment resulting in closure of many of the garments factory in Bangladesh. So, in order to protect the interest of the garments sector the master bill of lading has to be endorsed by the bank.

15. Finally, they submit that several news items have been published in several newspapers regarding the fraud and mal-practice committed by the freight forwarding agents and foreign buyers causing failure to receive payment and foreign remittance in Bangladesh.

The present writ petitions have been hotly contested and the learned Advocates on both the sides have debated the points raised therein at sufficient length.

The issues before us;

(a) *whether a house bill of lading issued by a Freight Forwarding Agent is bill of lading.*

(b) *whether the provision with regard to the house bill of lading issued by the freight forwarding agent and the master bill of lading issued by the carrier has to be endorsed by the concerned bank/authorized dealer is beyond Section 8(i) of the Chapter 8 of the Guidelines for Foreign Exchange Transactions (GFET), 2009 (as of 31.05.2009).*

16. Since the entire matter is relating to Bill of Lading, therefore, it is necessary to understand what Bill of Lading is.

Bill of lading is a document signed by a carrier (a transporter of goods) or the carrier's representative and issued to a consignor (the shipper of goods) that evidences the receipt of goods for shipment to a specified destination and person.

Carriers using all modes of transportation issue bills of lading when they undertake the transportation of cargo. A bill of lading is, in addition to a receipt for the delivery of goods, a contract for their carriage and a document of title to them. Its terms describe the freight for identification purposes; state the name of the consignor and the provisions of the contract for shipment; and direct the cargo to be delivered to the order or assigns of a particular person, the consignee, at a designated location.

BILL OF LADING is also a memorandum or acknowledgment in writing, signed by the captain or master of a ship or other vessel, that he has received in good order, on board of his ship or vessel, therein named, at the place therein mentioned, certain goods therein specified, which he promises to deliver in like good order, at the place therein appointed for the delivery of the same, to the consignee therein named or to his assigns, he or they paying freight for the same.

17. **Bill of Lading** (abbreviated to B/L) is one of the MOST important documents in the whole shipping and freight chain.

A bill of lading is the evidence of the contract of carriage entered into between the "carrier" and the "shipper or cargo owner" in order to carry out of the transportation of the cargo as per contract between the buyer and the seller.

A bill of lading is issued by the carrier or their agent to the shipper or the agent in exchange for receipt of the cargo. The issuance of the bill of lading proves that the carrier has received the goods from the shipper or their agent in apparent good order and condition, as handed over by the shipper.

18. Bills of lading originated as no more than documents issued to merchants by carriers to evidence receipt by the carriers, in good condition, of cargoes shipped on board their vessels. This receipt function remains a primary function of the "face" of most bills of lading (i.e. the side of the bill of lading in which information specific to particular cargoes, such as description and weight or volume of bulk cargoes or the dimension number and seal numbers of containers in the case of containerized cargoes is entered, generally in numbered boxes.)

19. Scrutton on Charterparties and Bills of Lading, 19th Edition (1984) at para 2 describes a bill of lading as follows;

"After the goods are shipped, a document called a bill of lading is issued, which serves as a receipt by the ship-owner, acknowledging that the goods have been delivered to him for carriage..... the bill of lading serves also as;

1. Evidence of the contract of affreightment between the shipper and the carrier,

2. A document of title, by the endorsement of which the property in the goods for which it is a receipt may be transferred, or the goods pledged or mortgaged as security for an advance.

By statute, the rights and liabilities of the shipper under the contract of affreightment as set out in the bill of lading may be transferred with the full property in the goods to the consignee of the goods or the indorsee of the bill of lading. "

From the statement by the editors of the 19th edition of Scrutton (at 384);

"A house bill of lading issued by a forwarding agent acting solely in the capacity in the agent to arrange carriage is not a bill of lading at all, but at most a receipt for the goods coupled with an authority to enter into a contract of carriage on behalf of the shipper. It is not a document of title, nor within the Bills of Lading Act, 1855 and it is unlikely that it would

ever be regarded as a good tender under a cif-contract."
[Emphasis added]

Therefore, a document is not a bill of lading merely because that is what the purpose called it.

Section 7 of the Article 1 of PART I of the United Nations Convention on the Carriage of Goods by Sea ("Hamburg Rules") define what is bill of lading which runs thus:

7. "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

20. Section 2 of Article 14 of the PART IV of the United Nations Convention on the Carriage of Goods by Sea ("Hamburg Rules") says that the bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

Under the UCP 600-Article 24 relates to bill of lading. A bill of lading, however named, must appear to;

"a. A Road, rail or inland waterway transport document however named must appear to

i. indicate the name of the carrier and:

-be signed by the carrier or a named agent for or on behalf of the carrier.

(underline by us)

-indicate receipt of the goods by signature, stamp or notation by the carrier or a named agent for or on behalf of the carrier.

Any signature, stamp or notation of receipt of the goods by the carrier or agent must be identified as that of the carrier or agent.

Any signature, stamp or notation of receipt of the goods by the agent must indicate that the agent has signed or acted for or on behalf of the carrier.

(underline by us)

21. If a rail transport document does not identify the carrier, any signature or stamp of the railway company will be accepted as evidence of the document being signed by the carrier.

ii. indicate the date of shipment or the date the goods have been received for shipment, dispatch or carriage at the place stated in the credit. Unless the transport document contains a dated reception stamp, an indication of the date of receipt or a date of shipment, the date of issuance of the transport document will be deemed to be the date of shipment.

iii. indicate the place of shipment and the place of destination stated in the credit.

b. i. A road transport document must appear to be the original for consignor or shipper or bear no marking indicating for whom the document has been prepared.

ii. A rail transport document marked "duplicate" will be accepted as an original.

(iii) A rail or inland waterway transport document will be accepted as an original whether marked as an original or not.

c. In the absence of an indication on the transport document as to the number of originals issued, the number presented will be deemed to constitute a full set.

d. For the purpose of this article, transshipment means unloading from one means of conveyance and reloading to another means of conveyance, within the same mode of transport, during the carriage from the place of shipment, dispatch or carriage to the place of destination stated in the credit.

e.i. A road, rail or inland waterway transport document may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same transport document.

ii. A road, rail or inland waterway transport document indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment

22. On a plain reading of Article 24 of the UCP-600, it is abundantly clear that a house bill of lading is not a bill of lading.

23. According to sub- Article (b) of Article 1 the carriage of goods by Sea Act 1925 which says that the "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading (section 3 of the ARTICLE III of the SCHEDULE of the carriage of goods by Sea Act 1925)

24. The bill of lading can be treated as conclusive evidence as between the carrier and a receiver and as at least *prima facie* evidence as between the carrier and the shipper, as to the number weight or quantity and apparent order and condition of the cargo on

loading (see Section 7 of the ARTICLE III of the SCHEDULE of the Carriage of Goods by Sea Act, 1925; Hague and Visby Rules, Article III, rule 4; the Hamburg Rules, Article 16(3).

After the goods are loaded, the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper. (Section 7 of the ARTICLE III of the SCHEDULE of the Carriage of Goods by Sea Act, 1925.)

25. Under The Hague- Visby rules carrier includes the owner or charterer who enters into a contract of carriage with a shipper [Article 1 (a)].

Under the Hamburg Rules carriers conclude a contract of carriage of goods by sea with a shipper. These Rules also cover actual carriers, which include any person entrusted by the carrier to perform all or part of the carriage of the goods.

"Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper (sub- Article (a) of the ARTICLE I of the SCHEDULE of the Carriage of Goods by Sea Act, 1925.)

According to sub- Article (a) of the ARTICLE I of the SCHEDULE of the Carriage of Goods by Sea Act, 1925 a freight forwarder is neither as owner nor as charterer of the vessel has any authority to issue any bill of lading.

26. In order to get delivery order from the carrier as well as for getting payment under the letter of credit, it

mandatorily requires presenting "ocean bill of lading/ master bill of lading and none else."

Freight Forwarder is an entity that secures the business of various exporters and importers and has the ability/facility to store, distribute their clients' cargoes in addition to negotiating freight rates on behalf of the clients, process all relevant customs, port and government documentation on behalf of their clients either directly or through 3rd party sources.

27. The general purpose of issuing a HBL is if the forwarder in question wants to control the cargo and not leave it under the direct control of the line, and also since there will be variation in freights between the HBL and MBL. But there is nothing stopping a forwarder from issuing a HBL using the EXACT same details as the MBL, but it's just that such an issuance would be superfluous. Not only superfluous, but it will then mean that there are two documents of title to the same shipment which cannot be the case.

28. Freight Forwarder taking more responsibility than required or permitted by law. Certainly violates Freight Forwarding Agents (Licensing and Administration) Rules 2008 and Guideline for Foreign Exchange Transactions (GFET), 2009. (as of 31.05.2009).

Therefore, a house bill of lading issued by a forwarding agent acting

solely in the capacity of the agent to arrange carriage is not a bill of lading at all, but at the most a receipt for the goods coupled with an authority to enter into a contract of carriage on behalf of the shipper. It is not a document of title, nor within the Bills of Lading Act, 1855 and it is unlikely that it would ever be regarded as a good tender under a cif-contract.

Section 8 of the Chapter 8 of the Guidelines for Foreign Exchange Transactions (GFET), 2009(as of 31.05.2009) is only for carriers. Section 8 clearly says that;

*"8. In exercise of powers vested in the Bangladesh Bank under section 20(3) of the FER Act, **all carriers** whether common or private (Railway, Shipping or Airline companies) and their agents are directed as under:*

- (i)
- (ii)

29. *Since, admittedly the petitioners are not carriers; therefore, this section has no manner of application to them.*

It is a well settled principle of law that in order to get a Rule of mandamus the petitioners must show that their claim is rooted in the statute or statutory Rule.

So, it has always required that the applicant for a mandamus should have a legal specific right to enforce the performance of those duties.

In the case of Queen v. Guardians of the Lewisham Union, reported in (1897) 1 QB 498 it was observed;

"This court would be far exceeding its proper functions if it were to assume jurisdiction to enforce the performance by public bodies of all their statutory duties without requiring clear evidence that the person who sought its interference had a legal right to insist upon such performance."

30. *In the case of Talekhal Progressive Fisherman Co-operative Society Ltd. Vs. Bangladesh and others reported in 1981 BLD (AD) 103 wherein it has been observed:*

"In order to entitle a person to ask for performance of any public duty by mandamus it is necessary to show that he has a legal right for claiming such performance part from the fact that he is interested in the performance of the duty."

The case of National Engineers vs. Ministry of Defence reported in 44 DLR (AD) (1992) 179 our Apex Court held thus:

"In order to enforce the performance by public bodies of any public duty by mandamus, the applicant must have a specific legal right to insist upon such performance".

A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the public

bodies and there is a failure on the part of those public bodies to discharge their statutory obligations. The paramount function of a writ is to compel performance of public duties prescribed by statute and to keep public bodies exercising public functions within the limits of their jurisdiction. Therefore, mandamus may issue to compel the public bodies to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

31. *In the cases in hand, the petitioners have completely failed to show us any legal right under the statute to enforce its performance rather their claims are amorphous fallacious and absolutely based on erroneous notion and as such instant writ petitions are not maintainable in law.*

In the result, the Rules are discharged without any order as to cost.

Communicate the judgment and order at once.

Cases cited:

- * *Queen Vs. Guardians of the Lewisham Union, (1897) 1 QB 498.*
- * *Talekhal Progressive Fisherman Co-operative Society Ltd. Vs. Bangladesh and others, 1981 BLD (AD) 103.*
- * *National Engineers Vs. Ministry of Defence, 44 DLR (AD) (1992) 179.*