F.R.M. Nazmul Ahasan, J: (Majority view):

203. I respectfully differ with the judgment pronounced by my senior brother, Md. Emdadul Huq, J and I am delivering the following judgment.

204. Short facts for disposal of the Rule Nisi are that the petitioner is a voter of the Constituency No.266 of Feni-2. The petitioner is a political person. He was a Councilor of word No.15, Feni Pourashava. He was Joint-Convener of Feni District Jubo League. The petitioner is a conscious citizen of the country.

205. The respondent No.7 contested in the Parliament Election in 2014 and elected as uncontested representative from the Constituency of Feni-2. A Gazette Notification was published by the Election Commission in 8th January, 2014 confirming the same. The name of the respondent No.7 was published in serial No.266 at page 228 of the Notification.

206. The petitioner came to know from the reliable sources that the respondent No.7 has made false statement in the affidavit as regards his criminal records for taking part in the National Election which has been submitted to the concerned Returning Officer, Feni. The correct information was not reflected in the affidavit though it was mandatory.

207. The petitioner has obtained a copy of the affidavit which was submitted by the respondent No.7 to the Returning Officer at the time of submitting the nomination paper for contesting the National Election at the Constituency of Feni-2 in 2014. The respondent No.7 submitted the affidavit being No.941 dated 02.12.2013 containing all material information required by the Election Commission. As per law, the information in the affidavit must be true to the best of knowledge of the deponent. However, in the affidavit in paragraph-3 (history of criminal records) at column No.7, the respondent No.7 stated that the Special Tribunal Case being No.757 of 1999 has been disposed of and he has been acquitted, which is wrong information. Actually he has deliberately suppressed the facts and eventually succeeded in becoming a Member of Parliament in the Constituency of Feni-2 in the last Parliament Election held on 05.01.2014. Earlier in the election of Feni Pourashava in 2011, the respondent No.7 also concealed information as to his criminal records referring the word 'acquitted'. The correct information as to criminal records was not mentioned in the affidavit, which is illegal and violation of the provision of law.

208. The respondent No.7 was charged under section 19(ka)(cha) of the Arms Act, 1878 in the Special Tribunal Case No.757 of 1999 arising out of Doublemuring P.S. Case No.29 dated 22.03.1992 and accordingly on 16.08.2000, the Additional Metropolitan Sessions Judge, 4th Court, Chittagong convicted and sentencing him to suffer rigorous imprisonment for 10 years and 7 years respectively both to run concurrently.

209. Thereafter, on 02.05.2001, the High Court Division dismissed the Criminal Appeal No.2369 of 2000 as preferred by the respondent No.7, Nijam Uddin Hajari. As the Criminal Appeal being dismissed, respondent No.7 preferred a Criminal Petition for Leave to Appeal being No.107 of 2001, which was also dismissed on 27.04.2002 by the Appellate Division. Thereafter, the respondent No.7 filed a Criminal Review Petition being No.18 of 2002 which was also dismissed on 26.06.2004 by the Appellate Division. After dismissal of the appeal and review the respondent has to suffer sentence as per judgment passed by the Tribunal on 16.08.2000 in Special Tribunal Case No.757 of 1999 under section 19(ka)(cha) of the Arms Act, 1878. But the respondent No.7 did not suffer the sentence by way of committing fraud.

209. On the other hand, a news item was published in 'the daily Prothom Alo' on 10.05.2014 having a title 'সাজা কম খেটেই বেরিয়ে যান সংসদ.' As per the news report, after the judgment being pronounced, the respondent No.7 surrendered to the Court on 14.09.2000 and accordingly he was sent to the Jail on the same day. It was also reported that he has been freed from the Jail on 01.12.2005 after serving 5 years 2 months and 17 days in Jail as Koyedi. As per the said news report, earlier the respondent No.7 had been in hajot for the instant case for a period of 4 months and 24 days but surprisingly as per the Koyed Register, it (hajotbas) was shown as 3 years 2 months and 25 days, which is illegal. The respondent No.7 had suffered both in hajot and Jail for a total period of 5 years 7 months and 21 days. It was reported that the duration of period of conviction of the respondent No.7 was reduced to 1 year 6 months and 17 days. In that context, it was reported that the respondent No.7 became free before 2 years 10 months and 1 day left of his actual exit date from Jail. It was also mentioned worthy that the Senior Super of the Chittagong Jail observed that it was a serious fraud made by the accused-convicted.

210. The petitioner has also obtained another confidential official records/information slip being No.654 dated 08.05.2014, which shows that the respondent No.7 has preferred another Criminal Appeal being No.1409 of 2006 dated 13.04.2006 against the judgment dated 16.03.2006 as pronounced by the Additional Sessions Judge, 4th Court, Chittagong in the Special Tribunal Case being No.757 of 1999. As the Tribunal passed judgment in Tribunal Case No.757 of 1999 in 2000 but the respondent with a malafide intension filed a fresh appeal by creating some concocted papers, which is evident from the information slip supplied by the office of the High Court Division, Dhaka.

211. As per Article 66(2)(d) of the Constitution of the People's Republic of Bangladesh, a person shall be disqualified for election as a Member of Parliament who has been on conviction for a criminal offence involving moral turpitude, sentenced to suffer imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release. Conduct of the respondent No.7 tantamount to moral turpitude for different practical reasons. Before serving out the punishment and thereby elapsing of subsequent five years, the respondent No.7 having contested the national election, hence, he may be declared disqualified for being Member of Parliament as per Articles 66(2)(d) and his seat may be vacated as per Article 67(1)(d) of the Constitution of the People's Republic of Bangladesh as well.

212. Pursuant to the show cause notice respondent No.7 appeared and filed affidavit-in-opposition with the contention that the petitioner filed this writ petition before this Court as one of the political rivals of the respondent No.7. The petitioner was the councilor of the Feni Pourashava but when the respondent No.7 elected Mayor of the Feni Pourashava, the petitioner defected to be elected as councilor of the said Pourashava and thereafter, conflict arises between the petitioner and the respondent No.7. Once upon a time, the petitioner was one of the close man of the respondent No.7 and when the respondent No.7 was inside the Jail in falsely implicated Criminal Case for the allegation of recovery of unauthorized arms in his possession and was convicted and sentenced, and the writ petitioner was the tadbirkar of the said Criminal Case up to the Appellate Division of the Supreme Court of Bangladesh. Since the petitioner is an interested person and political rival of the respondent No.7 and brought the present writ petition with malafide intention in the name of public interest litigation after 8(eight) years of release of the respondent No.7 from Jail and became elected as Mayor of Feni Pourashava and then elected as a Member of Parliament.

213. It is further contended that the respondent No.7 did not serve the sentence by way of committing fraud is not correct; that the respondent No.7 has been released from the Jail custody as per provision of the Jail Code by serving the sentence awarded against him. The respondent No.7 did not commit any wrong in filing the affidavit before the Returning Officer for participating in the National Election for the Member of Parliament and he was released from Jail after completion of the period of sentence as per provision of Jail Code and that the respondent No.7 did not suppress anything in his aforesaid affidavit.

214. The Metropolitan Sessions Judge, 4th Court, Chittagong vide judgment and order dated 16.08.1999 convicted the respondent No.7 in Special Tribunal Case No.757 of 1999 arising out of Doublemuring Police Station Case No.29 dated 22.03.1992 under section 19(a) and (f) of the Arms Act and sentenced him to suffer rigorous imprisonment for a period of 10(ten) years under section 19(a) of the said Act and further sentenced for a period of 7(seven) years under section 19(f) of the said Act concurrently. After judgment dated 16.08.1999, the respondent No.7 surrendered before the Court on 14.09.1999 and preferred appeal being Criminal Appeal No.2369 of 2000 before the High Court Division of the Supreme Court of Bangladesh. The High Court Division dismissed the appeal vide judgment and order dated 02.05.2001 and against that the respondent No.7 preferred Criminal Petition for Leave to Appeal No.107 of 2001 before the Appellate Division which was dismissed on 27.02.2002. Against the said judgment dated 27.02.2002, the respondent No.7 filed Criminal Review Petition No.18 of 2002 and the said Review Petition was dismissed on 26.06.2004.

215. The respondent No.7, after dismissal of the Review Petition served in the custody and after serving in the custody he has been released from the Chittagong Central Jail on 01.12.2005 as per the Jail Code on the basis of remission. The respondent No.10-'the daily Prothom Alo' in paragraph No.6 of its affidavit-in-compliance dated 07.07.2014 by annexing the photocopy of snap shot of remission ticket at page-26 stated that 'the reporter took some snaps of the relevant parts of Koyed Register where necessary information lies as evidence of his news' which shows that the respondent No.7 has been released from Jail on the basis of remission on 01.12.2005.

216. The respondent No.7 after releasing from the Jail contested in the Pourashava election and was elected as Mayor of Feni Pourashava on 18.01.2011. Subsequently, he has contested in the National General Election and he has been elected as a Member of Parliament on 05.01.2014 from Feni-2, Constituency No.266.

217. The present petitioner claimed in the writ petition that he filed the instant writ petition pursuant to the news item published in 'the daily Prothom Alo' dated 10.05.2014 and he annexed the judgments passed by the different courts arising out of the Criminal Case against the respondent No.7. The petitioner applied for obtaining certified copy of judgment on 13.04.2014 and also applied for information slip on 08.05.2014 which shows that the petitioner has not filed the instant writ petition with clean hand. After publication of the said news item dated 10.05.2014 in 'the daily Prothom Alo', the Jail authority vide re-joinder (প্রতিবাদ-লিপি) dated 10.05.2014 clearly stated that the respondent No.7 after serving in custody was released from Jail on 01.12.2005 on the basis of remission.

218. The petitioner stated in the writ petition annexing an information slip that the respondent No.7 was released from Jail on 01.06.2006 pursuant to an order of the High Court Division passed in Criminal Appeal No.1409 of 2006 arising out of the judgment and order

dated 16.03.2006 passed by the Additional Sessions Judge, 4th Court, Chittagong in Special Tribunal Case No.757 of 1999. But the said date of judgment and information slip is absolutely false and fabricated and not correct as the judgment of the said Special Tribunal Case No.757 of 1999 was passed on 16.08.1999. The respondent No.7 obtained information slip from the Court of Additional Sessions Judge, 4th Court, Chittagong which shows that no such case was fixed on 16.03.2006 in the Court diary and cause list for judgment or order in Special Tribunal Case No.757 of 1999. It appears from the report of the Metropolitan Sessions Judge, Chittagong that no notice or order of the High Court Division passed in Criminal Appeal No.1409 of 2006 was communicated to the concerned Court.

219. The respondent Nos.8 and 9 in their affidavit-in-compliance dated 09.09.2014 annexed a copy of bail bond in page No.13 of the said affidavit-in- compliance. Subsequently, the respondent No.8 again submitted an inquiry report annexing a bail bond before the Court on 27.03.2016, but there are some gross discrepancies in the said two bail bonds which manifestly show that both the said bonds are fake and forged and created by the petitioner in connivance with the vested quarter.

220. The judgment of Special Tribunal Case No.757 of 1999 was upheld in Criminal Appeal No.2369 of 2000 by the High Court Division which was subsequently confirmed by the Appellate Division in Criminal Petition for Leave to Appeal No.107 of 2001 and Criminal Review Petition No.18 of 2002, hence, there is no scope to prefer second appeal against the self-same judgment and as such the story of releasing of the respondent No.7 on bail in the alleged Criminal Appeal No.1409 of 2006 is not correct.

221. Since, there is no record of the alleged Criminal Appeal No.1409 of 2006 in the High court Division as such the order of bail in Criminal Appeal No.1409 of 2006 which has been annexed by respondent Nos.8 and 9 as Annexure-X-1 of the affidavit-in-compliance dated 09.09.2014 is manufactured and fabricated.

222. While the respondent No.7 was inside the Jail from 14.12.2000 till his release on 01.12.2005 has donated blood 13 times and according to special remission the respondent No.7 has got extra remission of his sentence and also earned allowance of Tk.15 for donation of blood.

223. According to Jail Code sections 549-558 there is a provision for recording history ticket for each of the prisoners where all the records of the prisoners will be recorded from the date of entry of prisoner in Jail to release from Jail but the respondent No.8 could not produce history ticket of the respondent No.7 and the report is not a complete report.

224. One Mr. Sagir Miah, Senior Jail Super, Central Jail, Chittagong under his signature dated 10.05.2014 vide letter Memo No.44.07.15.00.111.03.13.14-2511/5 dated 10.05.2014 sent to the Editor, 'the daily Prothom Alo' protesting the news published on 10.05.2014 in the heading that 'সাজা কম খেটেই বেরিয়ে যান সংসদ' and in the said protest letter claimed that "রেয়াত প্রথায় সাজা ভোগ শেষে তিনি গত ০১.১২.২০১৫খ্রিঃ তারিখ অত্র কারাগার হতে মুক্তি লাভ করেন।"

225. The petitioner filed this writ petition with malafide intention and he is not a public spirited person as well as he has no track record in the field of public interest litigation as such the present writ petition is not maintainable. The respondent No.7 did not violate any

provision of Article 66(2)(d) of the Constitution of the People's Republic of Bangladesh or provisions of RPO, hence, the Rule may be discharged for ends of justice.

226. Pursuant to the show cause notice respondent Nos.8 and 9 appeared in the case. In compliance with the order of this Court dated 16.07.2014, the Respondent Nos.8 and 9 served a copy of the affidavit-of-compliance filed by them upon the learned Advocate for the Respondent No.7 and also prepared a report dated 03.09.2014 explaining their position as to Annexure-5 series of the affidavit-of-compliance filed by the Respondent No.10 and specifying as to how Annexure-5 series of the affidavit-of-compliance of Respondent No.10 could show that "মূল সাজা রেয়াত প্রথায় ভোগ শেষে মুক্তি দেওয়া হলো" Giving therein on 01.12.2005 as a date and also specifying the Annexure-X of their affidavit-of-compliance as to the release of the convict on 01.06.2006.

227. This court on 26.05.2016 passed an interim order of direction in the following manner:

"In view of the above, the IG Prison (Respondent No.8) shall, within 30(thirty) days from the receipt of the copy of this order, cause and inquiry by an officer above the rank of Senior Jail Super (Md. Sagir Mia) and shall within the 30 days file an affidavit on the following matters:

a. Whether respondent No.7, Nizam Uddin Hajari was allowed any remission in connection with the sentence imposed upon him in Special Tribunal Case No.757 of 1999, and if any remission was allowed to him, the exact period of remission, a calculation sheet and the attested photocopy of the decision of the Jail authority on such remission, if any, are to be furnished with the affidavit;
b. Whether respondent No.7, Nizam Uddin Hajari has served out the entire period of imprisonment by taking into account such remission period, if allowed, and whether any period of imprisonment is remaining to be served out by him;
c. Whether the following entry about remission of Nizam Uddin Hajari is recorded in the Register of the Jail and if so recorded what was the basis of recording such entry:

"মূল সাজা রেয়াত
প্রথায় ভোগ শেষে
মুক্তি দেওয়া হলো
রেয়াত ০১-০৬-২০১৭
(স্বাক্ষর-অস্পষ্ট)
১/১২/২০০৫
সিনিয়র জেল সুপার
চট্রগ্রাম কেনদ্রীয় কারাগার ।"

d. Respondent No.8 shall also make statement in the above affidavit with regard to the report dated 27.03.2016 already sent to this Court.

Office is directed to send at once a copy of this order to respondent No.9 by Guaranteed Express Post along with the photocopy of the Annexures-1 & 5.

The Bench Officer shall furnish free of cost an attested copy of this order to the learned Advocate for writ petitioner and also to the learned Advocates for respondent Nos.7 and 10 and the learned A.A.G.
This matter will appear in the list for further order on 12th July, 2016."

228. In compliance with the order of this Court dated 26.05.2016, the respondent No.8 formed a three member enquiry committee headed by the Deputy Inspector General, Prison

and the said committee after due investigation submitted report to the respondent No.8 and on the basis of the report submitted by the enquiry committee, the respondent No.8 stated that:

a. The respondent No.7 had been brought to prison on 14.09.2000 for the purpose of serving rigorous imprisonment for 10(ten) years in Special Tribunal Case No.757 of 1999 and was released from Jail on 01.06.2006. During this period, he enjoyed the total period of remission extending to 625 days i.e. 1 year 8 months and 25 days till his release from Jail custody on 01.06.2006.
b. The respondent No.7 has not served out the entire period of imprisonment. On 01.06.2006, he was released on bail from prison in pursuance to the Order dated 31.05.2006 passed by the Additional Magistrate, Chittagong in Criminal Miscellaneous Petition No.280 of 2006 complying with the bail order passed by the Division Bench of this Court comprising by their Lordships Mr. Justice S.K. Sinha and Mr. Justice Zubayer Rahman Chowdhury in Criminal Appeal No.1409 of 2006. Still the remaining portion of punishment left to be served out by the respondent No.7 is 2 years 6 months and 16 days.
c. The lower part of inmate admission register wherein the entry regarding release of the inmate is usually made was torn. And analyzing the given quotation by this Court, it can be seen that the then Senior Jail Super Mr. Bazlur Rashid signed that. The date of signature was on 01.12.2005 but the respondent No.7 was released on 01.06.2006. Such signature might have been forged by some evil circle inside the prison for giving benefit to the respondent No.7. However, such quotation has no relevance for releasing the respondent No.7 inasmuch as he was released on bail.
d. The respondent No.8 affirms and asserts that the report dated 27.03.2016 which was produced before this Court is true and correct. It appears from the facts that the portion of inmate admission register was torn and there was over writing with respect to the remission and there was fake entry to release him by asserting that he served out the sentence after deducting the period of remission that some evil circle inside the prison committed such act. The authority is considering to inquiry into the matter. And the respondent No.8 prepared a report dated 30.06.2016 along with relevant record/file in compliance with the order of this Court dated 26.05.2016.

229. By the Order of this Court dated 31.08.2016, the respondent No.8 investigated the matter and after perusing the relevant documents prepared a report on 09.10.2016.

230. The respondent No.8 humble submits that the provision of granting special remission to the prisoner for the act of blood donation was introduced by the Government of East Pakistan promulgating Circular No.353-H.J. dated 21.05.1959 and the Government of Bangladesh continue the provision of the said special remission for the blood donation vide the office order contains in Memo No.581/(56)/M-10/78 dated 27.04.1978. The said activities of blood donation were conducted by Medical College Hospital, District Modern Hospital, Sandhani Blood Bank and Red Crescent Society. The prisoner used to get special remission on the basis of blood donation. The aforesaid special remission for blood donation has been repealed by the office order contained in Memo No.পিডি/পরি(সাকুলার)/১০/২০০৭/৭৭৬(৭০) dated 27.02.2007.

231. As per Rule 767 of the Jail Code, there is a provision for recording the reason of remission, if any, and the number of days remitted by the authority in the remission card and history card. Rule 780(8) and 558 of the Jail Code require to preserve the said remission card and history card for 1(one) year. The Chittagong Central Jail authority did not find any record

for blood donation in the file of prisoner No.4114/A Nijam Uddin Hajari, Consequently, it was not possible to discover any date regarding the matter.

232. The authority of Chittagong Central Jail contracted with Sandhani, Chittagong Medical College Unit, Chittagong for seeking a report about blood donation of Nijam Uddin Hazari, the president of the Sandhani, Chittagong Medical College Unit informed that owing to financial hardship, lack of manpower and infrastructure, it was not possible to keep the records after passing so long time and moreover, the records were damaged owing to the office shifting. They do not have any record of blood donation from the period of 14.12.2000 to 15.9.2005. But Sandhani authority did not disown the blood donation certificate which was submitted by Respondent No.7 and the Sandhani expressed regret for this kind of unintentional mistake.

233. Respondent No.10 appeared and filed affidavit. In compliance of the show cause notice it is stated that the said news item (Annexure-2), the reporter took some snaps of relevant parts of Koyed Register where necessary information lies as evidence of his news. In respect of the statements made in paragraph Nos.1-9 of Affidavit-of-compliance dated 09.09.2014 are matters of record except the re-joinder (প্রতিবাদ-লিপি) dated 10.05.2014 made by respondent No.9 & the statement 'গত ০১.০৭.২০১৪ খ্রিষ্টাব্দ তারিখ প্রথম আলো পত্রিকার চট্টগ্রাম অফিসের সিনিয়র রিপোর্টার জনাব একরামুল হকের লিখিত আবেদনের প্রেক্ষিতে নিম্বাক্ষরকারী প্রদত্ত যে সকল তথ্য' respondent No.10 (Annexure-5 series) of Affidavit-of-compliance এর মাধ্যমে মহামান্য আদালতে উপস্থাপন করেছেন, তা সঠিক নয়। made by the respondent No.9 in his report dated 03.09.2014 and hence, the respondent No.10 has no comment except to state that the respondent Nos.8 & 9 are to put to strict proof thereof. The respondent No.10 didn't receive the re-joinder(প্রতিবাদ–লিপি) dated 10.05.2014 made by respondent No.9 to be published in 'the daily Prothom Alo'. It is further stated that the respondent No.9, regarding the service of the period of sentence in Jail by the Respondent No.7, Nizam Uddin Hazari, admitted in his re-joinder(প্রতিবাদ–লিপি) dated 10.05.2014 that 'রেয়াত প্রথায় সাজা ভোগ শেষে তিনি ০১.১২.২০০৫ খ্রিঃ তারিখ অত্র কারাগার হতে মুক্তি লাভ করেন' (Annexure-X1 to Affidavit-of-compliance dated 09.09.2014) which is a focal basis to the news item dated 10.05.2014 with regard to statement 'গত ০১.০৭.২০১৪ খ্রিষ্টাব্দ তারিখ প্রথম আলো পত্রিকার চট্টগ্রাম অফিসের সিনিয়র রিপোর্টার জনাব একরামুল হকের লিখিত আবেদনের প্রেক্ষিতে নিম্বাক্ষরকারী প্রদত্ত যে সকল তথ্য' respondent No. 10 Annexure-5 series of Affidavit of compliance- এর মাধ্যমে মহামান্য আদালতে উপস্থাপন করেছেন, তা সঠিক নয়।' (Annexure-X1 to Affidavit-of-Compliance dated 09.09.2014 page-9), the deponent begs to state that this statement is false, misleading and suppression of facts as Annexure-5 series of Affidavit-of-compliance dated 07.07.2014 filed on behalf of respondent No.10 are photocopies of snaps of concerned original koyed Register where lies some necessary information relating to the service of the period of sentence in Jail by the respondent No.7, Nizam Uddin Hazari.

234. At the time of hearing, Mr. M. Qumrul Haque Siddique, the learned Senior Advocate with Mr. Sattya Ronjan Mondal, the learned Advocate appeared on behalf of the petitioner. On the other hand, Mr. Shafiq Ahmed, the learned Senior Advocate with Mr. Md. Nurul Islam Sujan, the learned Advocate appeared on behalf of the Respondent No.7. Mr. Aminur Rahman Chowdhury, the learned Assistant Attorney General appeared on behalf of the Respondent Nos.8 and 9. Mr. Aftab Uddin Siddique, the learned Advocate appeared on behalf of the respondent No.10.

235. Mr. M. Qumrul Haque Siddique, the learned Senior Advocate appearing on behalf of the petitioner submits that as per Article 66(2)(d) of the Constitution of the People's Republic

of Bangladesh, the respondent No.7 is disqualified for election as, or for being, a Member of Parliament because the conduct of the respondent No.7 tantamount to moral turpitude in context of legal interpretation and for different practical reasons as well.

236. He next submits that as per Article 12(1)(d) of the RPO, the respondent No.7 is disqualified for election as, or for being, a Member of Parliament because of an offence as regards making false statement punishable under Article 73 of the RPO. Hence, he may be declared disqualified for election as per Article 12(1)(d) of the RPO for offences under Article 73 of the RPO and effective legal measures may also be taken against him for his corrupt practice under Article 73(3)(a) of the RPO for giving false statement in the affidavit.

237. He also submits that the respondent No.7 had an obligation under Article 12, clause (3b), sub-clause (b & C) of RPO, 1972 to submit true information as regards present and past criminal records of the candidate in the affidavit but he did not honestly disclose all the material and true information in the affidavit, which is clear violation of the above mentioned Article 12 (3b) (b & c) of the RPO, 1972. Hence, holding the present post by the respondent No.7 may be declared illegal.

238. He further submits that the respondent No.7 should be declared as disqualified because, under Article 63(1) (b & c) of the RPO, 1972 the High Court Division has authority to declare the election of any returned candidate to be void if, it is satisfied that the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member or the election of the returned candidate has been procured or induced by any corrupt and illegal practice.

239. He next submits that the respondent No.7 after failing in his all legal steps up to the Hon'ble Appellate Division preferred Criminal Appeal No.1409 of 2006 in this Court on 17.05.2006 and subsequently released from the Jail custody on 01.06.2006. As he was convicted and sentenced to suffer rigorous imprisonment for 10 years and 7 years concurrently and he surrendered on 14.09.2000 before the trial Court and sent to Jail custody and thereafter, he was released on bail on 01.06.2006. Thus, he was in Jail for 5 years 8 months and 19 days and if, he got the highest remission as per Jail Code, 1894 i.e. 60 days per year he will get remission with the sentenced 10 years for 600 days and in this way he has to be in the custody about 916 days more, which has not yet been served out. He further submits that according to section 568 of the Jail Code, 1894 the petitioner will not get remission more than one third of the entire sentence.

240. Mr. Shafiq Ahmed, the learned Senior Advocate along with Mr. Md. Nurul Islam Sujon, the learned Advocate appearing on behalf of the respondent No.7 submits that the Writ Petition is not maintainable as the petitioner is one of the political rival of the respondent No.7 who was a Councilor of the Feni Pourashava when the respondent No.7 was elected as Mayor of the said Pourashava and thereafter, conflict arises between the petitioner and respondent No.7 and since the petitioner is an interested person and political rival of the respondent No.7, Writ Petition brought with malafide intention after 8 years of released of the respondent No.7 from the Jail and became elected as Mayor of Feni Pourashava and thereafter, elected as a Member of Parliament.

241. He further submits that the respondent No.7 did not commit any fraud in order to get remission from the Jail and he has been released from the Jail custody as per provision of the Jail Code after serving sentence awarded against him and on remission. Thus, the question

raised by the petitioner is a disputed question of fact which is brought with malafide intention.

242. He next submits that a news which has been published in 'the daily Prothom Alo' and the allegation made by the petitioner and the respondent Nos.8 and 9 that he has not served out the entire period of sentence is a matter of calculation about the period of Jail custody of the respondent No.7 and all are disputed question of facts which cannot be resolved in the writ petition.

243. He also submits that the respondent No.7 did not file any Criminal Case so far known to him other than the Criminal Case in which he was convicted and preferred appeal and it was upheld by the Appellate Division and the respondent No.7 released from jail custody on 01.12.2005. Thus, this matter is also a disputed question of fact which cannot be resolved in the writ petition.

244. He next submits that the respondent No.7 did not commit any wrong in filing the aforesaid nomination paper before the Returning Officer i.e. for the Member of Parliament and he was released from jail after served out his sentence and on remission as per provision of Jail Code and the respondent No.7 did not suppress anything in his aforesaid affidavit.

245. He also submits that the respondent Nos.8 and 9 could not produce the history ticket in which the blood donation of the respondent No.7 was recorded and the report submitted by the respondent Nos.8 and 9 is not a complete report without placing the proof of blood donation which was recorded in the history ticket. Thus, on the basis of the aforesaid report, which is a disputed one, cannot be said that the respondent No.7 did not serve out the entire period which is claimed by the petitioner and the calculation of the remission awarded by the respondent No.7 by donation of blood is a disputed question of fact, as the respondent No.7 claimed that he has served out entire period of sentence with remission and the respondent Nos.8 and 9 claimed that he did not serve out the entire period of sentence is a highly disputed question of fact which cannot be resolved in the writ petition.

246. Mr. Aminur Rahman Chowdhury, the learned Assistant Attorney General appeared on behalf of the respondent Nos.8 and 9 and placed the affidavit-of-compliance dated 10.07.2014, 30.06.2016 and 09.10.2016 and submits that upon a direction, the respondent No.8 formed a 3 members inquiry committee and on the basis of the report submitted by the inquiry committee it appears that the respondent No.7 was released from jail on 01.06.2006 and during this period, he enjoyed the total period of remission extending to 625 days i.e. 1 year 8 months and 25 days till his release from jail on bail and has not served out the entire period of imprisonment and the remaining portion of punishment left to be served out by the respondent No.7 is 2 years 6 months and 16 days.

247. Learned A.A.G. placing the report of the jail authority submits that the Rules 780(8) and 558 of the Jail Code require to preserve the said remission card and history card for 1 year. The Chittagong Central Jail authority did not find any record for blood donation in the file of prisoner No.4114/A Nijam Uddin Hajari. Consequently, it was not possible to discover any data regarding the matter.

248. In this regard, he next submits that the Sandhani authority, Chittagong Medical College Unit informed that they do not have any record of blood donation from the period of

14.12.2000 to 15.09.2005 but admit certificate which was submitted by the respondent No.7 and the Sandhani expressed regret for this kind of unintentional mistake.

249. Mr. Aftab Uddin Siddique, the learned Advocate appearing on behalf of the respondent No.10 and submits that the news item published in 'the daily Prothom Alo' dated 10.05.2014 under the heading 'সাজা কম খেটেই বেরিয়ে যান সংসদ' is an authentic news which was published for public interest maintaining all ethics and norms of Journalism.

250. He next submits that after the publication of the aforesaid news item dated 10.05.2014, neither the respondent No.7 nor Chittagong Central Jail Authority denied the allegations or information made in the news item; or sent any re-joinder(প্রতিবাদ-লিপি) against the news item to Prothom Alo; which establishes the authenticity of content of the news item, but after filing of the present writ petition the respondent No.9 has stated, "গত ১০/০৫/২০১৪খ্রিঃ তারিখ দৈনিক প্রথম আলো পত্রিকায় 'সাজা কম খেটেই বেরিয়ে যান সংসদ' প্রকাশিত বক্তব্য সঠিক নহে" Which is nothing but an ill motivated trial to run the original fact into another direction. The respondent No.10 didn't receive the rejoinder (প্রতিবাদ-লিপি) dated 10.05.2014 made by the respondent No.9 to be published in 'the daily Prothom Alo'. The respondent No.9 regarding the service of the period of sentence in jail by the respondent No.7, Nizam Uddin Hazari, admitted in his re-joinder(প্রতিবাদ-লিপি) dated 10.05.2014 that, "রেয়াত প্রথায় সাজা ভোগ শেষে তিনি ০১/১২/২০০৫খ্রিঃ তারিখ অত্র কারাগার হতে মুক্তি লাভ করেন" which is a focal basis to the news item dated 10.05.2014.

251. We have heard the learned Advocates for the respective parties, perused the writ petition with supplementary affidavits and affidavits-in-reply, affidavits-in-compliance and other documents on record. It appears from the aforesaid facts and circumstances of the case that the respondent No.7 was convicted under section 19(a) and (f) of the Arms Act and sentenced to suffer rigorous imprisonment for a period of 10 years under section 19(a) of the said Act and further sentenced for a period of 7 years under section 19(f) of the said Act concurrently in Special Tribunal Case No.757 of 1999 passed by the judgment dated 16.08.1999. Thereafter, the respondent No.7 surrendered before the Court on 14.09.1999 and preferred appeal being Criminal Appeal No.2369 of 2000 before the High Court Division which was dismissed on 02.05.2001. Against which the respondent No.7 preferred Criminal Petition for Leave to Appeal No.107 of 2001 which was also dismissed on 27.02.2002. Against that, a Criminal Review Petition No.18 of 2002 was filed and the same was dismissed on 26.06.2004.

252. Admittedly, the respondent No.7 contested the Pourashava election and elected as Mayor of Feni Pourashava in the year of 2011 and thereafter, elected as Member of Parliament from Feni-2, Constituency No.266 dated 05.01.2014 and has been performing as a Member of Parliament.

253. On 10.05.2014 'the daily Prothom Alo' a daily newspaper published a news that,

'সাজা কম খেটেই বেরিয়ে যান সংসদ'
মনে হচেছ এটা জালিয়াতি ।
নিজাম হাজারী দুই বছর দশ মাস এক দিন কম
কারা ভোগ করে বেরিয়ে গেছেন ।
মোঃ ছগির মিয়া
চট্রগ্রাম কারাগারের জ্যেস্ঠ সুপার ।

254. From Annexure-5 series of the respondent No.10 a snap of 'the daily Prothom Alo' was annexed wherein it is found that,

"মূল সাজা রেয়াত
প্রথায় ভোগ শেষে
মুক্তি দেওয়া হলো
রেয়াত ০১-০৬-২০১৭
(স্বাক্ষর-অস্পষ্ট)
১/১২/২০০৫
সিনিয়র জেল সুপার
চট্রগ্রাম কেনদ্রীয় কারাগার ।"

255. The writ petitioner filed the writ petition and Rule Nisi was issued on 08.06.2014. The allegation was brought against the respondent No.7 in the writ petition is that the respondent No.7 was convicted and sentenced to suffer rigorous imprisonment for 10 years and 7 years concurrently meaning that he had to suffer 10 years in Jail, i.e. the respondent No.7 had suffered both in hajot and Jail for a total period of 5 years 7 months and 21 days and the duration of period of conviction of the respondent No.7 was reduced to 1 year 6 months and 17 days as per news report. In that context, it appears that the respondent No.7 became free almost 2 years and 10 months long before of his actual exit date from Jail, i.e. before finality of serving out his punishment, the respondent No.7 came out of the jail and contested the national election in 2014 from Feni-2 Constituency and as per Article 66(2)(d) of the Constitution of the People's Republic of Bangladesh, a person shall be disqualified for election as a Member of Parliament who has been on conviction for a Criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release and before serving out the punishment and thereby elapsing of subsequent five years, the respondent No.7 contested the national election and making false statement in the affidavit of the nomination paper and as such he may be declared disqualified for election as per Article 12(1)(d) of the RPO for offences under Article 73 of the RPO and holding the present post by the respondent No.7 is unlawful and may be declared illegal.

256. The respondent No.7 denied the allegation made in the writ petition stating that he has been released from Jail on 01.12.2005 after serving the sentence and getting remission from the Jail authority. This contention of the respondent No.7 is particularly supported by the respondent No.10 which published a news with a snapshot of the register of Chittagong Jail authority signed by the Senior Jail Super, Chittagong Central Jail that, "মূল সাজা রেয়াত প্রথায় ভোগ শেষে মুক্তি দেওয়া হলো রেয়াত ০১-০৬-২০১৭ (স্বাক্ষর-অস্পষ্ট) ১/১২/২০০৫ সিনিয়র জেল সুপার চট্রগ্রাম কেনদ্রীয় কারাগার ।" but this fact is denied by the respondent Nos.8 and 9 in their affidavit-in-compliance, they have stated that the respondent No.7 was released from jail on bail on 01.06.2006 in Criminal Appeal No.1409 of 2006 from the High Court Division.

257. From Annexure-X of the respondent Nos.8 and 9 Md. Sagir Mia, Senior Jail Superintendent, Chittagong Central Jail submitted that, 'কারাগার হতে সাজা কম খেটে বেরিয়ে যাওয়ার কোন সুযোগ নেই । বর্ণিত কয়েদী নিজাম হাজারী অত্র কারাগার হতে সাজা ভোগরত অবস্থায় মহামান্য আদালতের আদেশ মোতাবেক জামিনে মুক্তি লাভ করেন ।' and he begs apology for his earlier re-joinder(প্রতিবাদ-লিপি) that the respondent No.7 was released on 31.12.2005 from the jail on remission.

258. From the report dated 30.06.2016 filed by the respondent No.9 that, 'কয়েদি নং ৪০১৪/এ জনাব নিজাম উদ্দীন হাজারী সম্পর্কিত চট্টগ্রাম কেন্দ্রীয় কারাগারের ভর্তি রেজিস্টার নিরীক্ষা করে দেখা যায়,

উক্ত প্রষ্ঠায় নীচের কোনায় একটি বড় অংশ ছেড়া কয়েদি ভর্তি রেজিস্টারের ২৫ নং কলামে যেখানে বন্দি মুক্তি সংক্রান্ড় তথ্য লিপিবদ্ধ করা হয় সেই অংশটুকুই ছেড়া (ছায়ালিপি সংযুক্ত-ঙ)।
ভর্তি রেজিস্টারের মুক্তি সংক্রান্ড় তথ্য লিপিবদ্ধ সংক্রান্ড় কলামের অংশটুকু ছেড়া থাকা, ভর্তি রেজিস্টারে রেয়াত সংক্রান্ড় তথ্য ঘষামাজা থাকা, মূল সাজা রেয়াত প্রথায় মুক্তি দেয়া হলো মর্মে ভুয়া এন্ট্রি ইত্যাদি বিষয়গুলো পর্যবেক্ষণ করে প্রতীয়মান হচ্ছে কারাগারের কোন দুষ্ট চক্রের মাধ্যমে কোন অবৈধ উদ্দেশ্য/হীন স্বার্থ চরিতার্থ করার মানসে এ মিথ্যা ঘটনাসমূহ সাজানো হয়েছে। জনাব নিজাম উদ্দীন হাজারী ২০১১ সালে পৌরসভা নির্বাচনে আইনগতভাবে মনোনয়ন দাখিলের শর্ত পূরণার্থে ৫ বছর পূর্বে কারা মুক্তির কোন প্রত্যয়ন সংক্রান্ড় তথ্য বা নথি যদি কারা কর্তৃপক্ষ বা বিজ্ঞ বিচারিক আদালত কর্তৃক নির্বাচন কমিশনে উপস্থাপিত হয়ে থাকে তবে তা নিরীক্ষণ করার প্রয়োজন রয়েছে এবং তার জন্য একটি সমন্বিত তদন্ড় কমিটি গঠনের প্রয়োজনীয়তা বিবেচিত হচ্ছে।'

259. From Annexure-X dated 09.10.2016, report of the IG Prison it appears that, 'উপরোক্ত সার্কুলার মূলে রক্তদানের বিনিময় কোন কয়েদী আসামীর প্রাপ্ত বিশেষ রেয়াত সুবিধা বিস্ড়ারিত কারা বিধি ৭৬৭ এর বিধান মোতাবেক বন্দীর রেয়াত কার্ড ও হিস্ট্রি টিকেটে রেয়াত প্রদানের কারণ ও প্রাপ্ত রেয়াতের পরিমাণ উলে- খ থাকতো। উলে- খ্য যে, রেয়াত কার্ড ও হিস্ট্রি টিকেট সংরক্ষণের মেয়াদ কারা বিধির ৭৮০ (৮) ও ৫৮৮ এর বিধান মোতাবেক ০১ (এক) বৎসর। কয়েদী নং ৪১১৪/এ নিজাম উদ্দিন হাজারী এর হিস্ট্রি টিকেট, রেয়াত কার্ড এবং রক্তদান সংক্রান্ড় কোন নথি পত্র চট্টগ্রাম কেন্দ্রীয় কারাগারে খুজে না পাওয়ায় উক্ত বিষয়ে বিস্ড়ারিত তথ্য উদঘাটন করা সম্ভব হয়নি। চট্রগ্রাম কেন্দ্রীয় কারাগারে জনাব নিজাম হাজারীর রক্ত দান সংক্রান্ড় কোন তথ্য না পাওয়ায় কারা কর্তৃপক্ষ এ বিষয়ে প্রতিবেদন প্রেরণের জন্য সন্ধানী, চট্টগ্রাম মেডিক্যাল কলেজ ইউনিট, চট্টগ্রাম বরাবরে পত্র মারফত যোগাযোগ করেন।
সন্ধানী এক পত্রের মাধ্যমে জানায় যে, ১৪-১২-২০০০ খ্রিঃ হতে ১৫-০৯-২০০৫ খ্রিঃ পর্যন্ড় সময়ের চাহিত রেকর্ড পত্রাদি ১০-১২ বছরের পুরনো বিধায় এবং তাদেও কার্যালয় স্থানান্ড়রের সময় বিনষ্ট হয়েছে বিধায় চাহিত তথ্য প্রদানে অপারগতা প্রকাশ করে দু:খ প্রকাশ করেছেন । তবে সন্ধানী কর্তৃপক্ষ প্রদত্ত সনদ অস্বীকার করেননি।'

260. From the aforesaid report of the respondent Nos.8 and 9 it appears that the respondent Nos.8 and 9 admitted that the information record in the admission register was torn and it was done by some dishonest clique and to find out the real fact, an inquiry committee may be formed and it further reveals that there is no existence of history ticket wherein the elaborate information of blood donation of the prisoner is recorded. There is no information about the blood donation in the record of the Chittagong Central Jail. The Sandhani authority also could not produce any record though they did not deny their certificate about the blood donation.

261. From Annexure-10, it appears that during his custody in jail from 14.09.2000 to 01.12.2005 respondent No.7 donated blood in total 13 times through the Chittagong Jail authority to the Sandhani, a renowned charitable organization of medical students, and thereby obtained special remission under Code No.765 of the Jail Code, but the respondent No.8 did not count the said special remission. From the certificate dated 06.10.2005 given to the respondent No.7 by Sandhani (Annexure-9) has been annexed with the affidavit-in-reply of the respondent No.7 to the affidavit-in-compliance of the respondent No.8, a certificate was also given to the respondent No.7 by the Sandhani authority which quoted below:

প্রশংসাপত্র

এই মর্মে প্রত্যায়ন করা যাইতেছে যে, নিজাম উদিদন হাজারী, পিতা-জয়নাল আবেদীন হাজারী, আইডি নং-৪১১৪/এ কারান্তরীন থাকাকালীন চট্রগ্রাম কেনদ্রীয় কারাগারে গত ১৪-১২-২০০০ খ্রিঃ হতে ১৫-০৯-২০০৫ খ্রিঃ পর্যন্ড় সময়ের মধ্যে আত্মমানবতার সেবায় নিয়োজিত হইয়া চট্রগ্রাম কেনদ্রীয় কারাগার কর্তৃপক্ষের মাধ্যমে ১৩ (তের) ইউনিট রক্তদান করায় আপনাকে অত্র সংস্হার পক্ষ থেকে দেশ ও জাতির কল্যাণে ভূমিকা রাখায় আন্তরিকভাবে ধন্যবাদ জ্ঞাপনসহ আপনার মংগল ও উজ্বল ভবিষ্যত কামনা করছি।

স্বাক্ষর স্বাক্ষর
সভাপতি সাধারণ সম্পাদক

সন্ধানী, চট্টগ্রাম মেডিক্যাল কলেজ ইউনিট, সন্ধানী, চট্টগ্রাম মেডিক্যাল কলেজ ইউনিট,

262. The total extra remission of sentence as per the circular has been calculated as follows:

For 1st time ---------- 30 days
2nd time ---------- 32 days
3rd time ---------- 34 days
4th time ---------- 36 days
5th time ---------- 38 days
6th time ---------- 40 days
7th time ---------- 42 days
8th time ---------- 44 days
9th time ---------- 46 days
10th time ---------- 48 days
11th time ---------- 50 days
12th time ---------- 52 days
13th time ---------- 54 days
Total 13th times ---------- 486 days

263. For proper adjudication of the matter, let us examine the Articles 65 & 66 of the Constitution of the People's Republic of Bangladesh and other provisions of the RPO, which reads as follows:

পঞ্চম ভাগ
আইন সভা
প্রথম পরিচ্ছেদ-সংসদ

সংসদ প্রতিস্ঠা ৬৫।(১) জাতীয় সংসদ নামে বাংলাদেশের একটি সংসদ থাকিবে----------

সংসদে নির্বাচিত হইবার যোগ্যতা ও অযোগ্যতা

৬৬। (১)----------

(২) কোন ব্যক্তি সংসদের সদস্য নির্বাচিত হইবার এবং সংসদ সদস্য থাকিবার যোগ্য হইবেন না, যদি

(ক)----------
(খ)----------
(গ)----------
(ঘ) তিনি নৈতিক স্খলনজনিত কোন ফৌজদারী অপরাধে দোষী সাব্যস্ত হইয়া অন্যূন দুই বৎসরের কারাদনেড দনিডত হন এবং তাঁহার মুক্তিলাভের পর পাঁচ বৎসরকাল অতিবাহিত না হইয়া থাকে;

264. The Representation of the People Order, 1972 (Amendment 2007), section:

"12.(1) Any elector of a constituency may propose or second for election to that constituency, the name of any person qualified to be a member under clause (1) of Article 66 of the Constitution:

(a)…….

[(ai) is a person who is convicted of an offence punishable under Articles 73, 74, 78, 79, 80, 81, 82, 83, 84 and 86, and sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since the date of his release;

265. Article 15 of the Representation of the People Order, 1972 (Amendment 2007) provides as under:

"15. (1) The Returning Officer shall, after the scrutiny of nomination papers, prepare and publish in the prescribed manner a list of candidates who have been validly nominated."

266. Chapter V (Election Disputes) of the Representation of the People Order, 1972 (Amendment 2007) provides sections 49, 51 and 57 as under:

49.(1) No election shall be called in question except by an election petition presented by a candidate for that election in accordance with the provisions of this Chapter.

(2) An election petition shall be presented to the High Court Division within such time as may be prescribed.

51.(1)Every election petition shall contain-

(a)……

(b)full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice or illegal act and the date and place of the commission of such practice or act; and

(2) A petitioner may claim as relief any of the following declarations, namely-

(a) That the election of the returned candidate is void;

(3) Every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings.

57.(1)Subject to the provisions of this Order and the rules, every election petition shall be tried, as nearly as may be, in accordance with the procedure for the trial of suits under the Code of Civil Procedure, 1908;

(2)Subject to the provisions of this Order the evidence Act, 1872, shall apply for the trial of an election petition.

267. The present petitioner stated in the writ petition by annexing an information slip (Annexure-E to the writ petition) that the respondent No.7 was released from Jail on 01.06.2006 pursuant to an order of the High Court Division passed in Criminal Appeal No.1409 of 2006 arising out of the judgment and order dated 16.03.2006 passed by the learned Additional Sessions Judge, 4th Court, Chittagong in Special Tribunal Case No.575 of 1999. But the respondent No.7 filed an information slip from the Court of the learned Additional Sessions Judge, 4th Court, Chittagong which shows that no such case was fixed on 16.03.2006 in the court diary and cause list for judgment or order in special Tribunal Case No.757 of 1999. The High Court Division asked for report of the learned Metropolitan Sessions Judge, Chittagong and it appears from the report of the learned Metropolitan Sessions Judge, Chittagong dated 23.03.2016 that no notice or order of the High Court Division passed in Criminal Appeal No.1409 of 2006 was communicated to the concerned Court.

268. The High Court Division asked for report of the Inspector General (Prison), i.e. the respondent No.8 and it appears from the report submitted by the respondent No.8 that the respondent No.7 was released bail on 01.06.2006 in Criminal Appeal No.1409 of 2006. But the learned Metropolitan Sessions Judge, Chittagong in his report clearly stated that no notice or order of bail/admission/call for record passed by the High Court Division in the said Criminal Appeal was communicated to the concerned court.

269. The respondent No.8 and respondent No.9 (Senior Jail Super, Chittagong Central Jail) in their affidavit-in-compliance dated 09.09.2014 annexed a copy of bail bond in page No.13 of the said affidavit-in-compliance. Subsequently, the respondent No.8 again submitted an inquiry report annexing a bail bond before the Court on 27.03.2016, but there are some gross discrepancies in the said two bail bonds. Some of the discrepancies are given in the table below:

SI	Copy of bail bond annexed with affidavit-in-compliance of respondent Nos. 8 and 9 dated 9.9.2014	Copy of bail bond submitted by respondent No.8 on 27.3.2016
Nature of Case	Tick mark on appeal	Tick marks on both appeal and revision
Section	19(f)	19(a) and 19(f)(Ka)
Name of the District	X	Feni
Appeal Number	X	1409/06
Signature of the accused	X	
Seal of the court of District Magistrate	X	
Signature of the Advocate	Not Same	Not same
Alignment	Not same	Not same

270. From the above discrepancies it may be presumed that the report and documents before this Court are not admitted rather disputed and beyond reasonable doubt.

271. The High Court Division vide order dated 26.05.2016 further directed the respondent No.8 i.e. IG Prison, to submit the attested photocopy of the decision of the jail authority on the remission given to the respondent No.7. But the respondent No.8 has submitted only a calculation sheet without submitting the decision on remission. The calculation sheet prepared by the respondent No.8 does not reflect the actual remission given to the respondent No.7 since the respondent No.8 has prepared the calculation sheet as per 1st part of the Jail Code in relation to the remission (general remission) partially counting the remission of respondent No.7. The respondent No.8 in its calculation sheet has not considered the special remission as laid down in the 2nd Part of the Jail Code in relation to the remission, i.e. Code No.765. The respondent No.8 also has not considered any Gazette leave and weekly holidays as laid down in Code No.689 of the Jail Code (ধর্মীয় আচার). The respondent No.8 also has not considered previous custody of the respondent No.7 served from 22.03.1992 to 28.07.1992 in connection with the Special Tribunal Case. The above mentioned remission has been recorded in the history ticket of the respondent No.7 as per Code No. 556 of the Jail Code which has been kept with the jail authority.

272. The calculation report on remission submitted by the respondent No.8 does not reflect the actual remission as the respondent No.8 admittedly stated in its calculation report/sheet, ‘ কারা বিধি ১ম খন্ডের ৭৮০(৮) ও ৫৫৮ ধারা অনুযায়ী রেয়াত কার্ড ও হিস্ট্রি টিকেট সংরক্ষণের মেয়াদ ১ বৎসর হওয়ায় উক্ত রেয়াত কার্ড ও হিস্ট্রি টিকেট অবলোকন করার কোন সুযোগ ছিল না।’ In this regard Code No.558 of the Jail Code provides, ‘কোন বন্দী কারাগারে মারা গেলে তার হিস্ট্রি টিকেট মৃত্যুর পর দুই বছর পর্যন্ড় সংরক্ষিত

থাকবে। সাজাপ্রাপ্ত বন্দীর মুক্তির পর এক বা দুই বছর পর্যন্ড় তার হিস্ট্রি টিকেট সংরক্ষিত থাকবে।' The Code No.774 of the jail Code further provides " যে সব সাজাপ্রাপ্ত বন্দী মুক্তি পেয়ে যাবে তাদের রেয়াত কার্ড (জেল ফরম-১৮) এক বছর কারাগারে সংরক্ষণ করতে হবে।" As admittedly the respondent No.8 has destroyed the remission card and history ticket after 1(one) of releasing the respondent No.7. It appears that the respondent No.7 was released from the jail after serving out his sentence on the basis of remission on 01.12.2005 (as evidence from the remission register namely রেয়াত টিকেট-১৮ annexed as Annexure-1 to the supplementary affidavit on behalf of respondent No.7 dated 18.05.2016). It is necessary to mention here that after publication of the news item dated 10.05.2014 in 'the daily Prothom Alo' regarding release of respondent No.7 from Jail, the Jail authority vide re-joinder(প্রতিবাদ-লিপি) dated 10.05.2014 signed by Senior Jail Super, Sagir Mia clearly stated that the respondent No.7 after serving in custody was released from Jail on 01.12.2005 on the basis of remission. The respondent No.8 does not disown the said re-joinder(প্রতিবাদ-লিপি) dated 10.05.2014.

273. The statement of the respondent No.8 regarding preferring Criminal Appeal being No.1409 of 2006 by the respondent No.7 and releasing him on bail is also a disputed question of fact. As mentioned above, the learned Metropolitan Sessions Judge, Chittagong submitted a report dated 23.03.2016 clearly stating that no notice or order of High Court Divison passed in Criminal Appeal No.1409 of 2006 was communicated to the concerned Court. Moreover, if any prisoner prefers any appeal to the High Court Division than Code No.605 of the Jail Code provides, 'যখন কোন বন্দী হাইকোর্ট আপীল করে তখন জেল সুপার উক্ত আপীলের বিষয়ে দায়রা আদালতকে (এম)১০৫ নম্বর হাইকোর্ট ফরমে অবহিত করবেন।' But the Chittagong Jail authority never informed the special Tribunal about the said Criminal Appeal No.1409 of 2006 which further creates a doubt whether such appeal was preferred by the respondent No.7. Hence, the claim of the respondent No.8 that the respondent No.7 was released on bail is also a disputed question of fact.

274. The respondent No.8 has admitted that 'the lower part of inmate admission register wherein the entry regarding release of the inmate is usually made was torn'. The respondent No.8 has also admitted that the remission ticket on 01.12.2005 has been signed by the then Senior Jail Super Mr. Bazlul Rashid from where it appears that the respondent No.7 has been released from jail on 01.12.2005 on the basis of remission.

275. It appears that the petitioner alleged that the respondent No.7 is disqualified from the time of filing nomination paper as a candidate of the Member of Parliament by making false statements.

276. Article 66(2) of the Constitution of the People's Republic of Bangladesh and the Article 12(1)(d) of the RPO relates to the election disputes triable before the election Tribunal. These factual aspect of the writ petition which discussed above are not admitted rather, it is disputed in different aspect and without taking evidence about the disputed fact of date of release of the respondent No.7 from Jail custody, the calculation of blood donation to the Sandhani and the special remission provided in the Jail Code which is recorded in the history ticket, it cannot be decided in a summary proceeding in the writ petition.

277. Articles 57(1) and (2) of the RPO provides that:

"57.(1)Subject to the provisions of this Order and the rules, every election petition shall be tried, as nearly as may be, in accordance with the procedure for the trial of suits under the Code of Civil Procedure, 1908;

(2)Subject to the provisions of this Order the evidence Act, 1872, shall apply for the trial of an election petition."

278. In this respect Article 125 of the Constitution of Bangladesh is very much applicable in the facts and circumstances of the case. Particularly, the facts and circumstances arises in the writ petition is a clear bar as this type of dispute cannot be decided without any evidence both oral and documentary. If we read Articles 102 and 125 of the Constitution together with Article 66 of the Constitution and relevant sections 12, 15, 49, 57 of the RPO, it may be presumed that the disputes of the present writ petition cannot be decided without any trial in accordance with Article 57(1) and (2) of the RPO. As the disputed facts arises which is discussed above which came before this Court on making inquiry and report, it is not clear in which report is correct. The respondent No.7 claims that he has been released from jail custody on 01.12.2005. The respondent Nos.8 and 9 in their report stated that the respondent No.7 was released on bail in Criminal Appeal No.1409 of 2006 on 01.06.2006 which is strongly denied by the respondent No.7 that he has preferred another appeal in which he has been granted bail.

279. It is discussed above that the record of the subsequent Appeal No.1409 of 2006 is missing (from the report of the office of the High Court Division) and also the report of the respondent No.9, IG Prison, Dhaka that the history ticket is not available and the other record was not in proper position and he also recommended for an inquiry committee to find out the real fact.

280. From the aforesaid facts and circumstances it appears that there cannot be any decision that the respondent No.7 has made false statements in the nomination paper releasing from the Jail without serving entire sentence awarded against him before establishing an allegation by any legal proceedings that he has committed any fraud for releasing from the Jail custody before serving the entire sentence.

281. In the case of Mahmudul Haque (Md) vs. Md. Hedayetullah and others reported in 48 DLR (AD) 128 wherein it is held, "Constitution of Bangladesh, 1972-Article 102-In election matters the jurisdiction of the High Court Division cannot be invoked under Article 102 of the Constitution except on a very limited ground of total absence of jurisdiction (Coram non-judice) or malice in law for the purpose of interfering with any step taken in the election process." "Election" connotes the process of choosing representatives by electorates in democratic institutions. The election process starts from the Notification issued by the competent authority (in a parliamentary election or bye election, by the Election Commission) declaring election schedule and culminates in the declaration of result of election by a gazette notification. In the instant case the election process started with the Notification issued by the Election Commission on 12.12.1994. In pursuance thereof the appellant and respondent Nos.1-3 submitted their respective nomination papers on 01.01.1995. On 02.01.1995 at the time of scrutiny respondent No.1 raised a dispute as to the age of the appellant. But the Returning Officer in exercise of his authority under clause (3) of Article 14 of President's Order No.155 of 1972 upon assigning reasons and upon apparent compliance with Article 14(3)(d)(iii) of President Order No.155 of 1972, namely, that "the Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll" disallowed the objection and accepted the nomination paper of the appellant as valid. Thereafter, the question as to whether the appellant had really attained the age of 25 years on 01.01.1995 or not, undoubtedly became an election disputes. For proper adjudication of election dispute President's Order No.155 of 1972 provides under Chapter V a special

forum and procedure. An election dispute can only be raised by way of an election in the manner provided therein. Where a right or liability is created by a statute providing special remedy for its enforcement such remedy as a matter of course must be availed of first. The High Court Division will not interfere with the electoral process as delineated earlier in this judgment, more so if it is an election pertaining to Parliament because it is desirable that such election should be completed within the time specified under the Constitution. In the instant case, a serious dispute as to the correct age of the appellant was raised before the High Court Division which was not at all a subject matter of decision on mere affidavits and certificates produced by the parties.

282. It was not within the jurisdiction of the High Court Division to enter into a field of investigation as to the correct age of the appellant on 01.01.1995, which would be appropriate for the Election Tribunal to investigate into on taking evidence, if and when raised after the poll."

283. In the case of Dr. Mohiuddin Khan Alamgir vs. Government of the People's Republic of Bangladesh reported in 62 DLR (AD) (2010) 425 wherein it is held, "Constitution of Bangladesh, 1972-Article 125-Article 125 of the Constitution provides that no election to the offices of President or to the Parliament shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under law made by the Parliament and in such view of the matter there is a complete ouster of jurisdiction in entertaining writ petition in the matter of election disputes except in cases of Coram non-judice or malice in law."

284. From the aforesaid decisions it appears that our Appellate Division is reluctant to entertain any application which ought to have disposed of by the election Tribunal. So, on this context present writ petition is not maintainable.

285. And in the case of Kurapati Maria Das vs. M/S. Dr. Ambedkar Seva Samajan in Supreme Court of India Civil Appeal No.2617 of 2009 (arising out of SLP (Civil) No.15144 of 2007). On 20.08.2006 a writ petition was filed before the Andhra Pradesh High Court with the following prayers:

> "For the said reasons, it is prayed that this Court may be pleased to issue a writ or order or direction more particularly one in the nature of Writ of Quo- Warranto against the 9th respondent. (a) directing the 9th respondent to disclose the authority under which he is holding the office of the Chairperson and the office of the Councilor of the Bapatla Municipal Council, Guntur District (representing Ward No.8).(b) directing the 9th respondent to vacate the offices of the Chairperson and the Councilor of the Bapatla Municipal Council, Guntur District (representing Ward No.8), or, (c) removing the 9th respondent from the office of the Chairperson and from the office of the Councilor of the Bapatla Municipal Council, Guntur District (representing Ward No.8) and (d) to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."
>
> "For the said reasons, it is prayed that this Court may be pleased to issue a writ or order or direction more particularly one in the nature of Writ of Quo- Warranto against the 9th respondent. (a) directing the 9th respondent to disclose the authority under which he is holding the office of the Chairperson and the office of the Councilor of the Bapatla Municipal Council, Guntur District (representing Ward No.8).

286. In paragraph-14 of the aforesaid judgment it is observed: "In the first place, it would be better to consider as to whether the bar under Article 243ZG (b) is an absolute bar. The Article reads as thus:

"243ZG(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

287. At least from the language of clause (b), it is clear that the bar is absolute. Normally, where such a bar is expressed in a negative language as is the case here, it has to be held that the tone of clause (b) is mandatory and the bar created therein is absolute. This Court in its recent decisions has held the bar to be absolute. First such decision is reported as Jaspal Singh Arora v. State of M.P & Ors. [1998 (9) SCC 594]. In this case the election of the petitioner as the president of the Municipal Council was challenged by a writ petition under Article 226, which was allowed setting aside the election of the petitioner. In paragraph 3 of this judgment, the Court observed;

> "It is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by Courts in electoral matters contained under Article 243ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition."

288. The second such decision is reported as Gurdeep Singh Dhillon Vs. Satpal & Ors. 2006 (10) SCC 616]. In that decision, after quoting Article 243ZG (b) the Court observed that the shortcut of filling the writ petition and invoking Constitutional jurisdiction of the High Court under Article 226/227 was not permissible and the only remedy available to challenge the election was by raising the election dispute under the local statute.

289. In our Constitution, Article 125 reads as under:

"১২৫। এই সংবিধানে যাহা বলা হইয়াছে, তাহা সত্ত্বেও

(ক)----------

(খ) সংসদ কর্তৃক প্রণীত কোন আইনের দ্বারা বা অধীন বিধান-অনুযায়ী কর্তৃপক্ষের নিকট এবং অনুরুপভাবে নির্ধারিত প্রণালীতে নির্বাচনী দরখাস্ত ব্যতীত (রাস্ট্রপতি পদে) নির্বাচন বা সংসদের কোন নির্বাচন সম্পর্কে কোন প্রশ্ন উলথাপন করা যাইবে না ।"

290. The Article 243ZG(b) of the Indian Constitution and Article 125(Kha) of the Constitution of Bangladesh is similar.

291. In paragraph-17 of the aforesaid judgment it is stated that, "There is no dispute that Rule 1 of the Andhra Pradesh Municipalities (Decision on Election Disputes) Rules, 1967, specifically provides for challenging the election of Councilor or Chairman. It was tried to be feebly argued that this was a petition for quo-warranto and not only for challenging the election of the appellant herein. This contention is clearly incorrect. When we see the writ petition filed before the High Court, it clearly suggests that what is challenged in the election. In fact the prayer clauses (b) and (c) are very clear to suggest that it is the election of the appellant which is in challenge."

292. Another point raised by the respondent No.7 that the facts involved in the case is disputed in nature. It appears that 'the daily Prothom Alo' published the news that the

respondent No.7 released from the Jail on 01.12.2005 without serving the entire sentence. Thereafter, on the same day the Jail authority made a re-joinder(প্রতিবাদ-লিপি) on this issue containing that the respondent No.7 was released on remission. It is admitted by the respondent No.10 in affidavit-in-compliance that it has been proved by the snap of koyed register.

293. Now, the dispute arises when respondent Nos.8 and 9 in their affidavit-in-compliance and other affidavits contended that the respondent No.7 released from the Jail on 01.06.2006 on bail in an another Criminal Appeal No.1409 of 2006. This fact is denied by the respondent No.7 that he has been released on bail on 01.06.2006.

294. It is presumed that the respondent No.7 came out from the Jail released by the Jail authority, if there is any allegation against him that he has committed any fraud, legal action could be taken against him but nothing was done. If it is true that he is released on 01.06.2006 then the respondent Nos.8 and 9 is responsible for releasing him from the jail before completion of the serving of his remaining period.

295. For proper adjudication of the aforesaid matter, let us examine 'The Bengal Jail Code' 1894, which reads as under:

> Chapter XI-Prisoners' History Tickets
>
> 549. Every prisoner shall immediately of his reception in jail be provided with a History Ticket (B.J. Form Nos. 20, 21 or 22) in which, besides the information required by the heading, shall be recorded at the time, and in chronological sequence every occurrence of importance in the jail life of such prisoner, and every order specially relating to him.
>
> 556.The Deputy Superintendent (in a central jail) or the Jailer, the deputy Jailers or European warders, as the rules, or orders given by the Superintendent there under, require, shall enter in the ticket the following particulars-
>
> (a) the date of admission into the Jail;
>
> (b) the issue of clothing and kit on admission and subsequently, see Rule 506 and chapter XXXVIII;
>
> © any complaint made by the prisoner of sickness or report of his sickness;
>
> (d) application for copy of judgment if the prisoner wants to appeal, see Rule 603;
>
> (e) receipt of copy of judgment, see Rule 603;
>
> (f) dispatch of appeal, see Rule 603;
>
> (g) substance of order of Appellate court, see Rule 609;
>
> (h) the fact of appeal not being made before expiration of term allowed for appealing, see Rule 599;
>
> (i) the fact that a prisoner does not wish to appeal, see rule 606;
>
> (j) the amount of remission awarded, see Rule 763;
>
> (k) the total remission in days earned up to the end of each quarter;
>
> (l) any offence committed, including omission to perform tasks;
>
> (m) any interviews allowed and the receipt or dispatch of private letters, see Rule 664;
>
> (n) Inspector-General's sanction for employment as convict warder or night guard, see Rule 405 and 408;
>
> (o) Dispatch to a court, or transfer, discharge, or death;
>
> (p) the use of the latrine out of hours;
>
> (q) the word " unidentified'' in respect of every prisoner notified under rule 623;
>
> ® the weight of ankle ring or fetters if imposed; see Rule 1216;
>
> (s) any order for the repair of clothing, see rule 800.

Chapter XIII-Release of Prisoners

566. The warrants of all convicts whose release becomes due in any month shall be examined on the 25th day of the month proceeding to ascertain their correctness.

571. Each prisoner shall, before being released, be carefully compared with his personal description in the Admission Register, and the superintendent or Jailer, as the case maybe, shall satisfy him that the proper prisoner has been brought forward and that his sentence has been duly executed except in respect of remission earned under the remission rules.

The medical officer shall record, or cause to be recorded the health and weight of every prisoner on release, in the admission register, releases diary, and history ticket.

576. Every prisoner sentenced to imprisonment for 6 months or upwards shall, on release, be furnished with a certificate (B.J. Form No. 31) signed by the superintendent to the effect that he has completed his term of imprisonment. In case any remission of sentence has been granted, the amount should be stated.

Chapter XIV-Appeals and Petitions.

610(3) In every case in which a sentence is confirmed on appeal, the jail authorities shall receive information to this effect by means of the form prescribed. Irrespective, of the procedure prescribed above, the appellate court shall, for the information of the appellant, notify to the superintendent of the jail in which such appellant is confined the result of his appeal. This notification, which shall be made in the sanctioned form, is intended solely for the communication of the result of the appeal to the appellant, and in no way relieves judicial officers from the duty of issuing revised warrants when such are necessary. All warrants and orders issued with reference to a prisoner's appeal should be in English, and should state the prisoner's father's name as well as the prisoner's name.

Chapter XXI-Remission

756. Ordinary remission shall be awarded on the following scale:

(a) two days per month for thoroughly good conduct and scrupulous attention to all prison regulations;

(b) two days per month for industry and the due performance of the daily task imposed.

757. In lieu of the remission allowed under Rule 756, convict warders shall receive eight days ordinary remission pronto, convict night guards seven days per month, convict overseers six days per month and convict night watchmen five days per month.

758. Subject to the provisions of Rule 755, remission under rule 756 shall be calculated from the first day of the calendar month next following the date of the prisoner's sentence; any prisoner who, after having been released on bail or because his sentence has been temporarily suspended is afterwards re-admitted to jail shall be brought under the remission system on the first day of the calendar month next following his re-admission, but shall be credited on his return to jail with any remission which he may have earned previous to his release on bail or the suspension of his sentence. Remission under Rule757 shall be calculated from the first day of the next calendar month following the appointment of the prisoner as convict warder, convict overseer or convict night watchman.

759. Prisoners employed on prison services, such as cooks and sweepers, who work on Sundays and holidays, maybe awarded three days ordinary remission per quarter in addition to any other remission earned under these rules.

760. Any prisoner eligible for remission under these rules who for a period of one year reckoned from the first day of the month following the date of his sentence or the

date on which he was last punished for a prison offence, has committed no prison offence whatever, shall be awarded fifteen days ordinary remission in addition to any other remission earned under these rules.

761. Ordinary remission shall be awarded by the superintendent or, subject to his control and supervision and to the provisions of Rule 762, by the deputy Superintendent, Jailer, Deputy Jailer or any other officer specially empowered in that behalf by him.

762. An officer awarding ordinary remission shall, before making the award, consult the prisoner's history ticket in which every offence proved against the prisoner must be carefully recorded.

If a prisoner has not been punished during the quarter otherwise than by a formal warning, he shall be awarded the full ordinary remission for that quarter under Rule 756, or, if he is a convict officer under Rule 757.

If, a prisoner has been punished during the quarter otherwise than by a formal warning the case shall be placed before the Superintendent, who, after considering the punishment or punishments awarded, shall decide what amount of remission shall be granted under rule 756 or, if the convict is a convict officer, under Rue 757. All remissions recorded on the prisoner's history ticket shall be entered quarterly on the remission Card (B. J. Register No. 18)

763. The award of ordinary remission shall be made, as nearly as possible on 1st January, 1st April, 1st July and 1st October, and the amount shall be intimated to the prisoner and recorded on his history ticket. Remission granted to a prisoner under Rule 760 shall be recorded on his history ticket as soon as possible after it is awarded.

764. No prisoner shall receive ordinary remission for the calendar month in which he is released.

765. Special remission may be given to any prisoner whether entitled to ordinary remission or not, other than a prisoner undergoing a sentence referred to in Rule 752, for special services, as for example:

(1). Assisting in detecting or preventing breaches of prison discipline or regulations;

(2) Success teaching handicrafts;

(3) Special excellence in or greatly increased outturn of work of good quality;

(4) Protecting an officer of the prison from attack;

(5) Assisting an officer of the prison in the case of outbreak, fire or similar emergency;

(6) Economy in wearing clothes.

766. Special remission maybe awarded-

(a) By the Superintendent to an amount not exceeding thirty days in one year;

(b) By the inspector General or the Local Government to an amount not exceeding sixty days in one year.

767. An award of special remission shall be entered on the history ticket of the prisoner as soon as possible after it is made, and the reasons for every award of special remission by a superintendent shall be briefly recorded.

768. The total remission awarded to a prisoner under all these rules shall not without the special sanction of the Local Government, exceed one fourth part of his sentence.

296. So, the controversial statement of the respondent Nos.8 and 9 is not believable, even in their report they have admitted that there is no existence of history ticket about the claim of the respondent No.7 that he is released from the Jail after serving and on remission, this claim cannot be adjudicated as there is no existence of the history ticket. From the facts and

circumstances discussed above, we find the claim and counter claim of the respondent Nos.8 and 7 which is a disputed question of fact.

297. Now, another development is, respondent Nos.8 and 9 contends that the respondent No.7 was in Jail in another case which is found from the Criminal Appeal No.1409 of 2006 and which is also denied by the respondent No.7 and this matter is also a disputed question of fact what we have discussed earlier. It is very much clear that this factual aspect of the relevant documents which especially, the report of the respondent Nos.8 and 9 is disputed, controversial, contradictory and on the basis of those report, which is not a complete report, the respondent No.7 who is sitting Parliament Member, cannot be adjudicated that he was disqualified at the time of filing nomination paper making false statement and his seat should be vacated.

298. In the case of Abdul Mukit Chowdhury vs. The Chief Election Commissioner & ors reported in 41 DLR (HCD) (1989) 57 wherein it is held, "Examination of Annexure-A which in its turn requires elaborate investigation warranting proofs which is not the function of this court and it may cause prejudice to either party if the same be taken into consideration under summary proceeding. There being a forum namely, the Election Tribunal set up to investigate into facts, we, therefore, restrain ourselves from making any observation as to whether the same is authentic or otherwise."

299. In the case of Farid Mia (Md.) vs. Amjad Ali (Md.) alias Mazu Mia and ors reported in 42 DLR 13 wherein it is held, "Constitution of Bangladesh, 1972-Article 102-In a summary preceding under Article 102 of the Constitution it is not possible to record a finding as to a disputed question of fact.

300. In a quo-warranto proceeding, the exercise of authority is discretionary and, among other things, the court takes into consideration the motive of the person who moves the court.

301. As regards the first ground, it may be stated that if the purpose of the writ petition was only to challenge the election of the appellant on the alleged ground of his being a defaulter then we would have felt no hesitation to declare at once that the writ petition was not maintainable. Indeed, we have already held while rejecting CPSLA No.21 of 1988 (quoted in the affidavit-in-opposition) that "such questions as to disqualification, etc. which are questions of fact are better settled upon evidence which can be done more appropriately before a Tribunal. In the summary proceeding under Article 102 it is not desirable and, more often than not, not possible to record a finding as to a disputed question of fact."

302. The better view would have been to hold that in view of the facts of the case, it was not desirable to decide the issue in the writ jurisdiction without consideration of all the evidence-both oral and documentary."

303. In the case of AFM Shah Alam vs. Mujibul Huq & ors reported in 41 DLR (AD) (1989) 68 wherein it is held, "Reading the entire law and the rules we have come to this conclusion that the real and larger issue is completion of free and fair election with rigorous promptitude. Hence, election being a long, elaborate and complicated process for the purposes of electing public representatives it is not possible to lay down guidelines by any court because all the exigencies cannot be conceived humanly nor the vagaries of people contesting the election can be fathomed. In a dispute the issue is to be raised and evidence adduced for adjudication by a competent Tribunal. This function has been given to the

Election Tribunal and to nowhere else. The Election Commission has been given power to decide certain matters but such enquiry will not come within the purview of judicial enquiry because the power to decide judicially is different from deciding administratively. By taking resort to extraordinary jurisdiction for a writ the High Court Division will be asked to enter into a territory which is beset with the disputed facts and certainly by well-settled principles it is clear a writ court will not enter into such controversy."

> "The jurisdiction of the High Court Division under Article 102 of the Constitution cannot be invoked except on the very limited ground of total absence of jurisdiction (Coram non-judice) or malice in law to challenge any step in the process of election including an order passed by the Election Commission under Rule 70 because:
> (a)……
> (b)……
> (c) Almost invariably there will arise dispute over facts which cannot and should not be decided in an extraordinary and summary jurisdiction of writ."

304. In addition to the decisions referred to above of our apex Court, we may rely the rest part of the Judgment in the case of Kurapati Maria Das vs. M/S. Dr. Ambedkar Seva Samajan in Supreme Court of India Civil Appeal No.2617 of 2009 (arising out of SLP (Civil) No.15144 of 2007).

> "We are afraid, we are not in position to agree with the contention that the case of K. Venkatachalam vs. A Swamickan & Anr. [1999 (4) SCC 526] is applicable to the present situation. Here the appellant had very specifically asserted in his counter affidavit that he did not belong to the Christian religion and that he further asserted that he was a person belonging to the scheduled Caste. Therefore, the Caste status of the appellant was a disputed question of fact depending upon the evidence. Such was not the case in K. Venkatachalam vs. A Swamickan & Anr. [1999 (4) SCC 526] Every case is an authority for what is actually decided in that. We do not find any general proposition that eve where there is a specific remedy of filing an Election petition and even when there is a disputed question of fact regarding the caste of a person who has been elected from the reserved constituency still remedy of writ petition under Article 226 would be available.

305. Shri Gupta, however, further argued that in the present case what was prayed for was a writ of quo-warranto and in fact the election of the appellant was not called in question. It was argued that since the writ petitioners came to know about the appellant not belonging to the Scheduled Caste and since the post of the Chairperson was reserved only for the scheduled caste, therefore, the High Court was justified in entering into that question as to whether he really belongs to scheduled caste. In short, the learned counsel argued that independent of the election of the appellant as a ward member or as a chairperson; his caste itself was questioned in the writ petition only with the objective to see whether he could continue as the chairperson. This argument is clearly incorrect as the continuance of the appellant as the chairperson was not dependent upon something which was posterior to the appellant's election as chairperson. It is not as if some event had taken place after the election of the appellant which created a disqualification in appellant to continue as the firstly, as a ward member and secondly as the chairperson which election was available only to the person belonging to the scheduled caste. It is an admitted position that wards No.8 was reserved for scheduled caste and so, also the post of chairperson. Therefore, though indirectly worded, what was in challenge in reality was the validity of the election of the appellant. According to the writ petitioners, firstly the appellant could not have been elected as a ward member nor could he be elected as the chairperson as he did not belong to the scheduled

caste. We can understand the eventuality where a person who is elected as a scheduled caste candidate, renounces his caste after the elections by conversion to some other religion. Then it is not the election of such person which would be in challenge but his subsequently continuing in his capacity as a person belonging to a particular caste. This counsel for the appellant rightly urged that the question of caste and the election are so inextricably connected that they cannot be separated. Therefore, when the writ petitioners challenged the continuation of the appellant on the ground of his not belonging to a particular caste what they in fact challenged is the appellant on the ground of his not belonging to a particular caste what they in fact challenged is the appellant on the ground of his not belonging to a particular caste what they in fact challenged is the validity of the election of the appellant, though apparently the petition is for the writ of quo-warranto.

306. The Counsel for the appellant rightly urged that the question of caste and the election are so inextricably connected that they cannot be separated. Therefore, when the writ petitioners challenged the continuation of the appellant on the ground of his not belonging to a particular caste what they in fact challenged is the validity of the election of the appellant, though apparently the petition is for the writ of quo-warranto.

307. In conclusion their Lordships held, "Under such circumstances, we do not think that the High Court could have decided that question of fact which was very seriously disputed by the appellant. It seems that in this case, the High Court has gone out of its way, firstly in relying on the Xerox copies of the service records of the appellants and then at the appellate stage, in calling the files of the Electricity Board where the appellant was working. This amounted to a roving enquiry into the caste of the appellant which was certainly not permissible in writ jurisdiction and also in the wake of Section 5 of 1993 Act."

308. Again merely because the appellant was described as being a Christian in the service records did not mean that the appellant was actually a person professing Christian religion. It was not after all known as to who had given those details and further as to whether the details, in reality, were truthful or not. It would be unnecessary for us to go into the aspect whether the petitioner in reality is a Christian for the simple reason that this issue was never raised at the time of his election. Again the appellant still holds the valid caste certificates in his favor declaring him to be belonging to Scheduled Caste and further the appellant's status as the Scheduled Caste was never cancelled before the authority under the 1993 Act which alone had the jurisdiction to do the same. If it was not for High Court to enter into the disputed question of fact regarding the caste status of the appellant, the findings recorded by it on that question would lose all its relevance and importance. There is one more peculiar fact which we must note. It has come in the judgment of the learned Single Judge as also in the Division Bench that the appellant 'converted' to Christianity. Now, it was not nobody's case that the petitioner ever was converted nor was it anybody's case as to when such conversion took place, if at all it took place. All the observations by the learned Single Judge regarding the conversion of the appellant to Christianity are, therefore, without any basis, more particularly, in view of the strong denial by the appellant that he never converted to Christianity. Again the question whether the petitioner loses his status as Scheduled Caste because of his conversion is also not free from doubt in view of a few pronouncements of this Court on this issue. However, we will not go into that question as it is not necessary for us to go into that question in the facts of this case.

309. It was further held that, "If it was not for High Court to enter into the disputed question of fact regarding the caste status of the appellant, the findings recorded by it on that question would lose all its relevance and importance."

310. Be that as it may, in our opinion, the High Court clearly erred firstly, entertaining the writ petition, secondly in going into the disputed question of fact regarding the caste status, thirdly, in holding that the appellant did not belong to the Scheduled Caste and fourthly, in allowing the writ petition.

311. We, therefore, allow this appeal by setting aside two judgments one of the learned Single Judge and the other of the Division Bench of the High Court filed in appeal and direct the dismissal of the writ petition."

312. I have gone through the decisions referred to above; the principles laid down in the aforesaid decisions are very much applicable in the facts and circumstances of the present case as such the writ petition is not maintainable and the Rule is liable to be discharged.

313. The learned Advocate for the respondent No.7 argued that the writ petition is not maintainable on the ground that the petitioner is an interested person, he has come with malafide intention and he has not come before this Court with clean hands and he referred to a decision in the case of National Board of Revenue vs. Abu Saeed Khan and others reported in 18 BLC (AD) 116 regarding this writ petition is not maintainable in the light of the judgment passed by the Hon'ble Appellate Division of the Supreme Court of Bangladesh. As it is discussed above that the writ petition is not maintainable. So, there is no necessity to discuss this issue raised by the learned Advocate for the respondent No.7.

314. From the discussions made above and the decisions referred to in the aforesaid paragraphs, the facts and circumstances of the case, I am of the opinion that the writ petition is not maintainable.

315. Thus, the Rule fails.

316. In view of the discussions as made above, the Rule is discharged without any order as to cost.