

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

WRIT PETITION NO. 13385 OF 2017

IN THE MATTER OF:

An application under article 102 of the
Constitution of the People's Republic of
Bangladesh.

-AND-

IN THE MATTER OF:

S. M. Nahaz Pasha (Advocate) and others.
..... Petitioners

-Versus-

Government of the People's Republic of
Bangladesh represented by the Secretary, Ministry
of Health, Bangladesh Secretariat, Ramna, Dhaka
and others.

...Respondents

Mr. S. M. Munir with
Mr. S. M. Arif, Advocates
....For the petitioners

Ms. Tania Amir with
Mr. Sheikh Rafiqul Islam, Advocates
...For the respondent nos. 2 and 4

Heard on 08.07.2019 and 16.10.2019.

Judgment on 28.11.2019.

Present:

Mr. Justice Moyeenul Islam Chowdhury

-And-

Mr. Justice Md. Ashraful Kamal

MOYEENUL ISLAM CHOWDHURY, J:

On an application under article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioners, a Rule Nisi was issued calling upon the respondents to show cause as to why a direction should not be given to the respondent no. 3 to nominate 3(three) members from a list of 5(five) members submitted by the petitioner no.1(Annexure-'H' to the Writ Petition) to the elected Executive Committee of Gopalganj Red Crescent Unit, Gopalganj for the term 2017-2019 and/or such other or further order or orders passed as to this Court may seem fit and proper.

The case of the petitioners, as set out in the Writ Petition, in short, is as follows:

The Bangladesh Red Crescent Society (respondent no. 1) was constituted under Article 3(1) of the Bangladesh Red Crescent Society Order, 1973 (President's Order No. 26 of 1973). The petitioners are the permanent residents of Gopalganj District and they are the life members and annual members of Gopalganj Red Crescent Unit, Gopalganj. Anyway, the Executive Committee of Gopalganj Red Crescent Unit for the period 2014-2016 was running very smoothly; but the term of the said Committee was set to expire on 31.12.2016. As such the election of the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 was due and the Executive Committee by its resolution decided to hold an Annual General Meeting (AGM) of the Unit on 03.12.2016. A notice of the said AGM and the election was published in "The Daily Banglar Sanket" on 08.10.2016. In due course, the notice was sent to all the members of the unit by post. The Election Commission declared the election schedule for the election of the Executive Committee of Gopalganj Red Crescent Unit on 10.10.2016. The petitioner no. 2 as Secretary of Gopalganj Red Crescent Unit sent a letter

dated 02.10.2016 requesting the respondent no. 3(Chairman, Bangladesh Red Crescent Society) to send an election observer from the headquarters of the Society and also informed him of the holding of the AGM on schedule. Only 7(seven) members filed their nomination papers on the day fixed for filing the nomination papers, that is to say, on 13.11.2016. As those candidates were equal in number to the number of the elected members of the Executive Committee and as those nomination papers were found valid, the Election Commission declared them elected against their respective posts for the term 2017-2019 on 18.11.2016. The Annual General Meeting of Gopalganj Red Crescent Unit was held on 02.12.2016 and 03.12.2016 at Gopalganj District Bar Association Building. The Chief Election Commissioner placed the election result of the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 in the Annual General Meeting which was duly approved. However, the petitioner no. 1 sent all the documents regarding the Annual General Meeting and the election of Gopalganj Red Crescent Unit for the term 2017-2019 to the respondent no. 3 with a forwarding letter dated 08.12.2016 by Courier Service on 10.12.2016. As there was no Chairman of Gopalganj Red Crescent Unit at the relevant time, the petitioner no. 1 as Vice-Chairman and officiating Chairman of the Unit sent a list of 5(five) members on 07.12.2016, as per Article 7(4) of the President's Order No. 26 of 1973, to the Chairman of the Bangladesh Red Crescent Society requesting him to nominate 3(three) members for the elected Executive Committee for the term 2017-2019; but in vain. Thereafter the petitioner no.1 contacted the Chairman of the Society on 27.12.2016 over mobile phone; but he did not nominate the 3(three) members for the Executive Committee of the Unit for the term 2017-2019, though he is duty

bound to nominate the 3(three) members. On 29.12.2016, the petitioner no. 1 as acting Chairman of Gopalganj Red Crescent Unit sent a reminder to the respondent no. 3 requesting him to nominate the 3(three) members, but without any result. Subsequently a notice demanding justice was sent to the respondent no. 3 on behalf of the petitioners by Guaranteed Express Post (GEP) on 07.08.2017; but the respondent no. 3 did not care to reply thereto. As per Article 9A(1) of the President's Order No. 26 of 1973, the term of the Executive Committee shall be three years commencing from the first day of January of the year following the year in which the general election to the elective office of the Executive Committee is held. So the tenure of the Executive Committee of Gopalganj Red Crescent Unit is from 1st January, 2017 to 31st December, 2019. By not nominating 3(three) members to the Executive Committee of the Unit as requested on several dates, the respondent no. 3 failed to perform his statutory duty. That is why, the petitioners were constrained to file the Writ Petition by invoking the writ jurisdiction of the High Court Division under Article 102 of the Constitution.

The respondent nos. 2 and 4 have contested the Rule by filing a joint Affidavit-in-Opposition. The case of the respondent nos. 2 and 4, as set out in the Affidavit-in-Opposition, in brief, runs as under:

The Bangladesh Red Crescent Society was created as an autonomous body under the President's Order No. 26 of 1973 having been vested with legal authority to settle any dispute arising out of or in connection with any matter of organization, election, management etc. The petitioners being the life members of Gopalganj Red Crescent Unit of the Bangladesh Red Crescent Society failed to avail themselves of an equally efficacious remedy

provided by Rule 68 of the Bangladesh Red Crescent Society (Organization and Management) Rules, 1973 (hereinafter referred to as the Rules of 1973). So the Writ Petition is not maintainable and consequently the Rule is liable to be discharged. However, the petitioners were not elected to the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019. Rather the election for constituting the Executive Committee of Gopalganj Red Crescent Unit for the term 2018-2020 was held on 01.12.2017 as per Article 7(4) of the President's Order No. 26 of 1973. According to the minutes of the meeting dated 01.12.2017, the respondent no. 8 (Md. Salauddin Panna) was elected as Vice-Chairman and the respondent no. 9 (Sikdar Nur Mohammad Dulu) was elected as Secretary along with 5(five) other members. The respondent no. 8 (Md. Salauddin Panna), Vice-Chairman of the elected Executive Committee of Gopalganj Red Crescent Unit, sent a list of 5(five) members to the Chairman of the Bangladesh Red Crescent Society for nominating 3(three) members out of those 5(five) members to the Executive Committee vide Memo No. R.C./Gopal./238-17 dated 02.12.2017. Since 01.01.2018, this Executive Committee has been discharging its duties in accordance with law. On the contrary, the Executive Committee of the petitioners of Gopalganj Red Crescent Unit for the term 2017-2019 is a paper Executive Committee.

In the Supplementary Affidavit-in-Opposition dated 20.10.2019 filed on behalf of the respondent nos. 2 and 4, it has been mentioned that the 3(three) members of Gopalganj Red Crescent Unit were already nominated by the Chairman of the Bangladesh Red Crescent Society on 27.01.2015 for the period starting from 1st January, 2015 to 31st December, 2017 pursuant to the election and the Annual General Meeting dated 21.11.2014 of the Unit.

As such there is no scope to entertain Annexure-‘H’ by the respondent no. 3 during the tenure and subsistence of the serving Executive Committee. In the eye of law, there cannot be any election or any elected member or nominated member during the tenure of the existing Executive Committee. In this perspective, the respondent no. 3 issued a certificate dated 16.10.2019 stating, *inter alia*, that since a valid and legitimate Executive Committee was fully constituted at the relevant time and was functioning during the validity of its tenure, there is no scope to entertain or approve any other Committee and that being so, Annexure-‘H’ is ‘non est’ in the eye of law.

In the Affidavit-in-Reply dated 30.07.2019 filed on behalf of the petitioners, it has been stated that the Writ Petition is maintainable in the eye of law. Rule 68 of the Rules of 1973 will not stand as a bar to the filing of the Writ Petition in view of the fact that the inaction of the respondent no. 3 has been challenged in this Writ Petition who is also the Chairman of the Managing Board of the Society. Besides, in various earlier Writ Petitions, namely, Writ Petition No. 8325 of 2002, Writ Petition No. 1241 of 2003 and other Writ Petitions, both the High Court Division and the Appellate Division found that those Writ Petitions were maintainable. The petitioners are the elected members of the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019. However, no election of the Executive Committee for the term 2018-2020 was held on 01.12.2017. In view of the objection to the alleged election dated 01.12.2017, the Chairman of the Society (respondent no.3) did not nominate 3(three) members as requested; but the said Committee did not take any legal step against the inaction of the Chairman of the Society in this regard. The Annexures- ‘II-

A', 'II-B' and 'II-C' are false, fabricated and created for the purpose of this Writ Petition.

In the Supplementary Affidavit-in-Reply dated 05.11.2019 filed on behalf of the petitioners, it has been mentioned that there has been a continuity of the formation and functions of various Executive Committees formed by the petitioners in the past. The alleged Executive Committee for the period 2015-2017 was first annexed as Annexure-'V' to the Affidavit-in-Opposition which was sworn on 18.07.2019, that is to say, after expiry of the tenure of the said Committee. As such the petitioners could not challenge the formation of the alleged Executive Committee for the term 2015-2017. However, the forwarding letter for nomination of 3(three) members as evidenced by Annexure-'H' to the Writ Petition was sent on 07.12.2016 by Courier Service; but through inadvertence, the receipt was not annexed and the same is annexed to this Supplementary Affidavit-in-Reply and marked as Annexure-'N'.

At the outset, Mr. S. M. Munir, learned Advocate appearing on behalf of the petitioners, submits that the Writ Petition is maintainable despite Rule 68 of the Rules of 1973 inasmuch as indisputably the Chairman of the Society is also the Chairman of the Managing Board and as the Chairman of the Society failed to nominate 3(three) other members to the Executive Committee of Gopalganj Red Crescent Unit, Gopalganj for the term 2017-2019 as per Article 7(4) of the President's Order No. 26 of 1973 on receipt of Annexure-'H' dated 07.12.2016, Annexure-'H-1' dated 29.12.2016 and Annexure-'I' dated 07.08.2017, the petitioners had to file the Writ Petition under compelling circumstances.

Mr. S. M. Munir further submits that as the Chairman of the Bangladesh Red Crescent Society is also the Chairman of the Managing Board of the Society and as the inaction of the Chairman of the Society has been challenged in this Writ Petition in nominating 3(three) members to the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 as evidenced by Annexures- 'H', 'H-1' and 'I' to the Writ Petition, the Chairman of the Society being the Chairman of the Managing Board cannot decide the dispute in view of the fact that no man can be a Judge in his own cause and this is why, the Writ Petition under Article 102 of the Constitution is maintainable.

Mr. S. M. Munir also submits that as the Chairman of the Managing Board, the respondent no. 3 is personally interested in the dispute and in this view of the matter, the personal bias of the respondent no. 3 against the petitioners will come into play and militate against the principle of natural justice and that being so, Rule 68 of the Rules of 1973 cannot stand as a bar to the maintainability of the Writ Petition in the facts and circumstances of this case.

Mr. S. M. Munir next submits that the Bangladesh Red Crescent Society is a 'local authority' within the meaning of section 3(28) of the General Clauses Act, 1897 and this view finds support from the decision in the case of Asgar Ali and others...Vs...Bangladesh and others reported in 63 DLR (HCD) 379 and hence the instant Writ Petition is maintainable under Article 102 (2)(a)(i) of the Constitution as a Writ of Mandamus.

Mr. S. M. Munir further submits that the election of the office-bearers of the Executive Committee of Gopalganj Red Crescent Unit, Gopalganj for the term 2017-2019 was not questioned till filing of the Affidavit-in-

Opposition by the respondent nos. 2 and 4 on 18.07.2019 and this long silence of the respondents in this respect is cryptic and mysterious.

Mr. S. M. Munir also submits that the respondent no. 8 is the Vice-Chairman and the respondent no. 9 is the Secretary of the alleged rival Executive Committee of Gopalganj Red Crescent Unit, Gopalganj; but curiously enough, they did not challenge the inaction of the respondent no. 3 (Chairman of the Bangladesh Red Crescent Society) in nominating 3(three) members to the alleged Executive Committee for the term 2018-2020 and no Writ Petition was filed by them.

Mr. S. M. Munir next submits that as the respondent no. 3 has the statutory duty of nominating 3(three) members to the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019, he cannot shy away from that duty at all and accordingly, this Rule of Mandamus is liable to be made absolute.

Per contra, Ms. Tania Amir, learned Advocate appearing on behalf of the respondent nos. 2 and 4, submits that the Writ Petition is not maintainable in view of Rule 68 of the Rules of 1973. In support of this submission, she refers to the judgment dated 04.08.1987 passed by the Appellate Division in the case of Md. Saidur Rahman...Vs... Bangladesh Red Cross Society and others in Civil Petition For Leave To Appeal No. 69 of 1987.

Ms. Tania Amir also submits that as per Rule 68 of the Rules of 1973, it was incumbent upon the petitioners to refer the dispute to the Managing Board of the Bangladesh Red Crescent Society for its resolution; but instead of so referring, the petitioners have invoked the writ jurisdiction of the High

Court Division under Article 102 of the Constitution despite the embargo imposed by Rule 68.

Ms. Tania Amir further submits that the respondent no. 3 does not perform any function in connection with the affairs of the Republic and the Bangladesh Red Crescent Society is not a 'local authority' and this being the state of affairs, the Writ Petition is not competent as framed.

Ms. Tania Amir also submits that the election of the Executive Committee of Gopalganj Red Crescent Unit, Gopalganj for the term 2017-2019 was held on 18.11.2016 illegally and as such the Rule is liable to be discharged.

Ms. Tania Amir next submits that the earlier Executive Committee of Gopalganj Red Crescent Unit discharged its functions and duties during the term 2015-2017 and the incumbent elected Executive Committee for the term 2018-2020 has been discharging the same, though the alleged Executive Committee of the petitioners is a paper committee.

We have heard the submissions of the learned Advocate for the petitioners Mr. S. M. Munir and the counter-submissions of the learned Advocate for the respondent nos. 2 and 4 Ms. Tania Amir and perused the Writ Petition, Affidavit-in-Opposition, Supplementary Affidavit-in-Opposition, Affidavit-in-Reply and Supplementary Affidavit-in-Reply and relevant Annexures annexed thereto.

Admittedly the Bangladesh Red Crescent Society Order, 1973 (President's Order No. 26 of 1973) was promulgated on 31.03.1973. The Bangladesh Red Crescent Society was constituted under the President's Order No. 26 of 1973. The Bangladesh Red Crescent Society (Organization

and Management) Rules, 1973 (Rules of 1973) were framed pursuant to Article 23 of the President's Order No. 26 of 1973.

At the outset, let us decide the question of maintainability of the Writ Petition. According to Rule 68 of the Rules of 1973, all disputes arising out of or in connection with or relating to any matter of organization, election, management, etc. of the Society shall be resolved by the Managing Board and when the Managing Board itself is involved in the dispute, by the President, and member or members of any Unit shall not take any such matter to the Court of law for decision. Unquestionably the Chairman of the Bangladesh Red Crescent Society is also the Chairman of the Managing Board of the Society. The petitioners have challenged the inaction of the respondent no. 3 in nominating 3(three) persons as members of the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 as evidenced by Annexure-'H' dated 07.12.2016, Annexure- 'H-1' dated 29.12.2016 and Annexure-'I' dated 07.08.2017. Now a pertinent question arises: can the respondent no. 3 (Chairman of the Bangladesh Red Crescent Society) being the Chairman of the Managing Board decide the 'lis' between himself and the petitioners in accordance with the provisions of Rule 68 of the Rules of 1973?

Lord Coke in *Dr. Bonham (8 Co. Rep. 113b)* laid down the principle that no man should be Judge in his own cause. With a view to strengthening public confidence, it was developed into a jurisdictional principle that no one having any interest or bias in respect of any matter is competent to take part in the decision-making relating to that matter. It was said that it "is of fundamental importance that justice should not only be done, but should

manifestly and undoubtedly be seen to be done.” (*Per Lord Hewart CJ in R. Vs. Sussex JJ ex p. McCarthy, [1924] 1 KB 256*)

It goes without saying that the respondent no. 3 is personally interested in the dispute in that his inaction has been challenged in nominating 3(three) members to the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 as evidenced by Annexure-‘H’ series and Annexure-‘I’ to the Writ Petition. Bias is a state of mind in which an adjudicator cannot decide fairly and impartially. It may arise in various ways and in a variety of circumstances and it is not possible to exhaust the possibilities. Bias may arise because of the decision-maker’s general interest in the subject-matter as a member of the administration in his official capacity.

The respondent no. 3 as the Chairman of the Managing Board of the Society, according to the principle of natural justice, cannot be the adjudicator of his own cause. Moreover, the Managing Board of the Society itself has no stake in the dispute; rather the Chairman of the Managing Board in his individual capacity as the Chairman of the Society is involved in the dispute. Hence Rule 68 of the Rules of 1973, according to us, is not a bar to the maintainability of the Writ Petition.

The facts and circumstances of the Civil Petition For Leave To Appeal No. 69 of 1987, as we see them, are quite distinguishable from those of the present case. So the judgment of that Civil Petition For Leave To Appeal No. 69 of 1987 has no manner of application to the facts and circumstances of the instant case. Hence Rule 68 will not stand as a bar to the competency of the Writ Petition.

It is the contention of Mr. S. M. Munir that the Bangladesh Red Crescent Society is a ‘local authority’ within the meaning of section 3(28) of the General Clauses Act, 1897. But Ms. Tania Amir repels this contention by asserting that the respondent no. 3 is neither a person performing any function in connection with the affairs of the Republic nor the Bangladesh Red Crescent Society is a ‘local authority’.

Anyway, in order to resolve this contentious issue, we may profitably advert to the decision in the case of *Asgar Ali and others...Vs...Bangladesh and others reported in 63 DLR (HCD) 379* relied upon by Mr. S. M. Munir.

In that decision, it has been held in paragraphs 4, 5 and 6:

“4. ... Mr. A F Hasan Ariff submits that an application under Article 102 of the Constitution can be maintained for declaring any act done by a person performing any function in connection with the affairs of the Republic or of a local authority. But according to him, Bangladesh Red Crescent Society nor any person performing function in connection therewith, is performing such function in connection with the affairs of the Republic nor the Society is a local authority as contemplated under Article 102(2)(a)(ii) of the Constitution. He further submits that there being alternative efficacious remedy available under Rule 68 of the Rules of 1973, the application itself is not maintainable.

5. We have considered the submissions made by the Bar and perused the materials on record. In reply to the submission made by Mr. AF Hasan Ariff as to the maintainability of the application, Mr. SM Munir refers to section 3(28) of the General Clauses Act and submits that the words Ñ

‘Local Authority’ shall mean and include a Paurashava, Zilla Board, Union Panchayat, Board of Trustees of a port or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, or any corporation or other body or authority constituted or established by the Government under any law.’

Thereafter referring to Article 102 of the Constitution Mr. SM Munir submits that though the respondents are not performing any functions in connection with the affairs of the Republic but in the definition of local authority as mentioned above, the Red Crescent Society being a body established by the Government under the President’s Order No. 26 of 1973, the respondents do come within the purview of Article 102(2)(a)(ii) of the Constitution. In support of his

submission, Mr. S M Munir refers to the decision in the case of *Bangladesh Co-operatives Insurance Ltd...Vs...Md. Abdul Khaleque Khan reported in 4 BLC (AD) 136*. On perusal of the provision of Article 102 of the Constitution as mentioned above and the definition of the words, 'Local Authority', we are of the view that in view of constitution/establishment of the Bangladesh Red Crescent Society by a Statute, namely, the Bangladesh Red Crescent Society Order, 1973, the said Society is a 'Local Authority' as defined under the General Clauses Act and hence we are led to the irresistible opinion that this application is maintainable.

6. To appreciate the second branch of submission of Mr. A F Hasan Ariff that in view of Rule 68 of the Rules of 1973, other efficacious remedy being available this application is not maintainable under Article 102 of the Constitution, let us quote Rule 68 of the Rules of 1973 which is as follows:

'68. All disputes arising out of or in connection with or relating to any matter of organization, election, management, etc. of the Society shall be resolved by the Managing Board and when the Managing Board itself

is involved in the dispute, by the President, and member or members of any Unit shall not take any such matter to the Court of law for decision.’

On perusal of the aforesaid provision, it appears that though a remedy has been available to resolve any dispute in connection with or relating to the Society, the Managing Board, or if the Managing Board is involved, the President has been empowered to settle the dispute. But in the instant case, the dispute is related to the Ad-hoc Managing Board itself, therefore, it cannot be decided by the Ad-hoc Managing Board and the impugned order Annexure- ‘D’ being issued by the President, the President also cannot be left to decide the dispute made against his action. In other words, a complaint made against the President cannot be entrusted to be decided by the President. From the above discussion, it is clear that notwithstanding the provisions of Rule 68 of the Rules, 1973, this Court has jurisdiction to entertain the present application under Article 102 of the Constitution.”

Reverting to the case in hand, our definite conclusion is that the Bangladesh Red Crescent Society is a ‘local authority’ and the Writ Petition

is maintainable in view of the ‘ratio’ enunciated in the decision *reported in 63 DLR (HCD) 379 (supra)*.

The second part of clause (2)(a)(i) of Article 102 of the Constitution confers power on the High Court Division to issue writs in the nature of Mandamus to compel a person performing functions in connection with the affairs of the Republic or a local authority to do something that he is required by law to do.

According to Ferris, “Generally speaking, it may be said that Mandamus is a summary writ, issuing from the proper Court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled as of legal right to have performed.” (“The Law of Extra-ordinary Legal Remedies”, paragraph 187). The difference between mandamus and prohibition is that mandamus commands a public functionary to do what he is under a legal duty to do, while prohibition is issued to prevent him from doing what he is not permitted by law to do.

A Writ of Mandamus may be issued on any person performing functions in connection with the affairs of the Republic or of a local authority. Such a person must hold office of a public nature (*Zainul Abedin...Vs...Co-operative Bank, (1996) 18 DLR (SC) 482*), that is to say, an office under the Constitution or a law relating to the affairs of the Republic or of a local authority. It will issue only when that public functionary has a public duty under a law and he refused to perform his legal duty; the duty may be judicial, quasi-judicial or purely administrative. The duty sought to be enforced must be a duty of a public nature, that is to say, a duty created

by the provisions of the Constitution or a statute or some other rule of common law or some rules or orders or notifications having the force of law.

If a statute has given a discretion to a public functionary to exercise some power, no Writ of Mandamus can issue to compel him to exercise the power since the existence of an obligatory duty is a precondition to the issuance of Writ of Mandamus. (*A. K. Roy...Vs...Union of India, AIR 1982 SC 710*)

For the purpose of disposal of this Rule, Article 7(1), (2), (3) and (4) of the President's Order No. 26 of 1973 may be quoted below verbatim:

“7. (1) There shall be constituted a Unit of the Society in each District and in each City.

(2) Subject to the control of the Managing Board, the administration and management of the affairs and business of a Unit shall vest in an Executive Committee consisting of—

- a) a Chairman;
- b) a Vice-Chairman;
- c) a Secretary; and
- d) [eight] other members.

(3) The Chairman of the Zilla Parishad in the case of a District and the Mayor of the Municipal Corporation in the case of a City shall be the Chairman of the Executive Committee of such Unit.

Explanation- “Chairman of the Zilla Parishad” or “Mayor of the Municipal Corporation” shall

include a person for the time being performing the functions of that office.

(4) The Vice-Chairman, the Secretary and [five of the eight] other members shall be elected in such manner as may be prescribed; and the three other members shall be nominated by the Chairman of the Society from amongst its members on the recommendation of the Chairman of the Executive Committee concerned.”

It may be recalled that the petitioners have filed the instant Writ Petition in order to compel the respondent no. 3 to nominate 3(three) other members to the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 as envisaged by Article 7(4) of the President’s Order No. 26 of 1973.

It transpires from the Writ Petition that the election of the Executive Committee of Gopalganj Red Crescent Unit manned by the petitioners for the term 2017-2019 was held on 18.11.2016; but strangely enough, the respondent nos. 2 and 4 for the first time questioned the legality and propriety of that election on 18.07.2019 by filing an Affidavit-in-Opposition. It does not stand to reason and logic as to why those respondents took an unusual amount of time in questioning the legality of the aforementioned election dated 18.11.2016. Their long silence without any explanation in this regard, in spite of receipt of Annexure-‘H’ dated 07.12.2016, Annexure-‘H-1’ dated 29.12.2016 and Annexure-‘I’ dated 07.08.2017, is mysterious, inexplicable and unfathomable. Besides, it is astounding that the respondent nos. 8 and 9 have failed to contest the Rule particularly when purportedly

the respondent no. 8 is the Vice-Chairman and the respondent no. 9 is the Secretary of the Executive Committee of Gopalganj Red Crescent Unit for the term 2018-2020 as per the claim of the respondent nos. 2 and 4. Over and above, it is not understandable as to why the respondent no. 3 has not come forward to have his say before this Court in connection with the instant Rule. On top of that, the rival Executive Committee of Gopalganj Red Crescent Unit of the respondent nos. 8 and 9 has not admittedly taken any legal step about the respondent no. 3's inaction in nominating 3(three) members thereto. So a question necessarily arises: what does this scenario indicate?

It is the definite claim of the respondent nos. 2 and 4 that the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 manned by the petitioners is illegal and a paper committee. On the contrary, it is the assertion on the part of the petitioners that their Executive Committee is legal and the so-called Executive Committees of Gopalganj Red Crescent Unit for the terms 2015-2017 and 2018-2020 are illegal and paper committees. This dispute cannot be resolved in this summary proceeding under Article 102 of the Constitution.

Be that as it may, had the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 manned by the petitioners been without any legal basis, the respondent no. 3, or for that matter, the concerned authority would have definitely taken necessary steps thereagainst; but to our dismay, no such steps were taken. Only on 18.07.2019, the Bangladesh Red Crescent Society challenged the legality of the formation of the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 by the petitioners by filing an Affidavit-in-

Opposition in this Writ Petition. Assuming for the sake of argument that the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 is unlawful, the respondent no. 3 is empowered to supersede the same under Article 9C(1) of the President's Order No. 26 of 1973; but that has not been done as of to-day.

According to the assertion of the petitioners, the tenure of the Executive Committee of Gopalganj Red Crescent Unit for the term 2017-2019 commenced on 1st January, 2017 and will come to an end on 31st December, 2019. So for all practical purposes, only a month is left for the expiration of the term of the purported Executive Committee of the petitioners.

However, regard being had to the observations and findings made and recorded in the body of the judgment and in the peculiar facts and circumstances of this case, we think, both the parties should be left to their own devices. Accordingly, they are left to their own devices and the Rule is disposed of without any order as to costs.

MD. ASHRAFUL KAMAL, J:

I agree.