

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

WRIT PETITION NO. 7695 of 2023

IN THE MATTER OF:

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Mawlana Obaidur Rahman (Mahbub).
..... Petitioner

versus

Government of Bangladesh and others
..... Respondents.

And

Mr. Shaikh Atiar Rahman, Advocate
..... for the Petitioner.

Mr. ABM Siddiqur Rahman Khan Senior Advocate with Mr. Istiak Ahmed with Mr. Niruparn Pandit, with Mr. Md. Monirul Islam, with Mr. Jawad Hassan Advocates

..... For the Respondent No. 5

Heard on: 16.07.2024 &

Judgment on 29.08.2024

Present:

Mr. Justice Mustafa Zaman Islam
and

Mr. Justice S.M. Masud Hossain Dolon

S.M. Masud Hossain Dolon, J:

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, Rule Nisi has been issued calling upon the respondents to show cause as to why the Memo No. 05.10.0600.117.58.002.23.167 dated 24.05.2023 issued under the signature of respondent No. 6 from the office of Deputy Commissioner, Barishal, Education and Welfare Division cancelling the existing Executive Committee of Jamia Islamia Mahmudia Madrashah,

Amanatgonj, Barishal and forming of Ad-hoc Committee with 19 persons (Annexure-D) should not be declared to have been made without lawful authority and is of no legal effect and /or pass such other or further order or orders as to this court may seem fit and proper.

Facts relevant for disposal of the Rule are that the petitioner was Mohtamim of Jamia Islamia Mahmudi Madrasha, Amanatgonj, Barishal and secretary, Executive Committee, Jamia Islamia Mahmudi Madrasha. After forming of National Qawmi Madrasa Education Board(Befaul) Jamia Islamia Mahmudi Madrasha, Amanatgonj, Barishal has been following and observing the Rules and Regulation of Befaul. Then forming the Executive Committee at the first instant Majlis-e-Shura is to be form and thereafter Majlis-e-Shura will form the Executive Committee. The Executive Committee is formed for a period of 1 year under the clause 37(Kha) of Dusture of Jamia Islamia Mahmudi Madrasah and last executive Committee formed through process on 06.07.2019 and their tenure has ended on 05.07.2020 but thereafter in spite of repeated requesting by concern persons but they did not call any meeting of Majlis-e-Shura and illegally had been continuing the Executive Committee. Due to illegal activities of the earlier Executive Committee at the instance of the petitioner and other concern persons on due process formed Majlis-e-Shura on 12.05.2023 and they formed the Executive Committee in which Pirs Saheb Charmonai was the

president and the present petitioner is the Secretary, Executive Committee, Jamia Islamia Mahmudi Madrasha. After the expiry of the respective Committee's time then formation of Executive Committee in due process it was informed to National Qawmi Madrasa Education Board (Befaqul). Thereafter Divisional Commissioner, Barishal was forming an Ad-hoc committee making the Deputy Commissioner, Barishal as convener and Kazi Mofijul Islam Kamal as Member Secretary along with other 17 members and District Education Officer, Barishal Member Secretary. Challenging the order of Divisional Commissioner, Barishal the petitioner filed the instant writ petition and obtained the Rule.

Mr. Shaikh Atiar Rahman, the learned Advocate for the petitioner submits that the Qawmi Madrasa is administered by National Qawmi Madrasa Education Board (Befaqul) and they are under the National Qawmi Madrasa Education Board (Befaqul) and relating to Qawmi Madrasa any decision if it is required to be taken it must be by the National Qawmi Madrasa Education Board (Befaqul) and the Divisional Commissioner has got no legal authority to interfere the administration of Qawmi Madrasa and as such by forming an Ad-hoc committee convened by Deputy Commissioner is highly illegal without jurisdiction and lawful authority and is of no legal effect. He further submits that the Qawmi Madrasah its administration and its Executive Committee and all affairs are controlled by the National Qawmi Madrasa Education

Board and therefore the impugned memo with refer to the Memo of Divisional Commissioner have been passed without lawful authority and is of no legal effect.

Mr. ABM Siddiqur Rahman Khan the learned Advocate for respondent No. 5 contested the Rule by filing an affidavit in opposition and submits that writ Petition are incorrect, misconceived, motivated and hence denied. He further submits that it is a settled principle of law that the writ petitioner being actually the Principal of the Madrasah has no legal authority to challenge formation of Ad-hoc Committee of the Madrasah pursuant to the impugned memo dated 24.05.2023 and hence the writ petition is not maintainable, in this regard he referred Alauddin Sikder (Md) and another vs Bangladesh and others reported in 56 DLR(AD) 130.

We have perused the writ petition and all other relevant papers submitted by the parties in connection with the contents of this writ petition along with supplementary affidavit, affidavit in opposition appended thereto. It appears from the record that petitioner is the Mohtamim (মোহতামিম) of the Jamia Islamia Mahmudi Madrasha, Amanatgonj, Barishal and *ex officia* Member Secretary of the Governing Body of the said Madrasha. Challenging the order contained in 05.10.0600.117.58.002.23.167 dated 24.05.2023 issued by the Respondent No. 6 Deputy Commissioner, Barishal nominating the Chairman by forming an Ad-hoc committee of the said Madrasha, on

the ground that Qawmi Madrasa is administered by National Qawmi Madrasa Education Board and any decision if it is required to be taken it must be by the National Qawmi Madrasa Education Board but Divisional Commissioner has got no legal authority to interfere the administration of Qawmi Madrasa.

It appears that a principal or a teacher of a Non-Government College or School or Madrasa has no locus standi to file a writ petition challenging the legality of nomination of the Governing Body of the College/School/Madrasa. It is strange that the petitioners in spite of being aware of the aforesaid decision in *Chairman, Civil Aviation Authority of Bangladesh vs Kazi Abdur Rouf and others* reported in 46 DLR (AD) 145 and thus being conscious of their having no locus standi to maintain the writ petition filed the same and thus entangled the Madrasa into useless litigation touching the affairs of the Madrasa with ulterior motive.

In view of the discussion made above we find substance in the submission of the learned Advocate for the respondent.

Thus, we find no merit in this Rule.

In the result, the Rule is disposed of without any order as to cost. The respondents are directed to hold a fresh election of Executive Committee of Jamia Islamia Mahmudia Madrasha, Amanatgonj, Barishal within 6(six) months from the date of receiving this judgment in accordance with law.

Let the order of stay granted earlier by this court is hereby vacated.

Communicate the order at once.

Mustafa Zaman Islam, J:

I agree