

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

**Writ Petition No. 692 of 2024**

**IN THE MATTER OF :**

An application under Article 102 (2) (a)(i) and (ii) of  
the Constitution of the People's Republic of Bangladesh  
-And-

**IN THE MATTER OF :**

**Miah Mohammad Jashimuddin Babul**

..... Petitioner

-Versus-

Director General, Department of Co-operative and  
others

..... Respondents

No one appears

.....For the petitioner

Mr. A.B.M. Altaf Hossain, Senior Advocate with  
Mr. Rusho Mostafa, Advocate

.....for the Respondent No.4

Md. Tushar Kanti Roy, D. A. G. with

Mr. Md. Salim Azad, A.A.G and

Ms. Anis ul Mawa, AAG and

Ms. Nazma Afree, A.A.G

.....For respondents

**Heard on : 03.07.2024 and  
Judgment On : 25<sup>th</sup> July , 2024.**

**Present:**

**Mr. Justice Mustafa Zaman Islam**

**&**

**Mr. Justice S.M. Masud Hossain Dolon**

**Mustafa Zaman Islam, J;**

In this application under article 102 of the Constitution of People's  
Republic of Bangladesh, a Rule Nisi was issued calling upon the  
respondents to show cause as to why the failure of the respondents to  
ensure preparation of correct voter list in connection with holding election

of Dhaka Cooperative House Building Society in terms of its order dated 08.01.2024 (Annexure-B) should not be declared to be without lawful authority and is of no legal effect and as to why the respondents should not be directed to take necessary steps for preparation of correct voter list by removing the particulars of "dead voters" and removing the particulars of voters whose name appear multiple times prior to initiate holding of the election of Dhaka Co-operative House Building Society within a stipulated period of time and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts necessary for disposal of the Rule, in short is that the petitioner is a member of Dhaka Co-operative House Building Society which is duly registered with the office of the respondents. The petitioner, in the capacity of member of the Society filed the instant writ petition to hold free and fair election and enforcement of the order of the respondents. The petitioner under the following circumstances moved the instant writ petition:-

(a) the society in question being Dhaka co-operative House Building Society is required to have election is required to have election on a periodic basis in terms of its constitutional documents and under the relevant law. Accordingly, through an EGM dated 15.11.2023, the management of the Society proceeded to hold election. Subsequently, on 01.12.2023, notice was issued for holding of election.

On 31.12.2023, the Society published an election schedule which contains the relevant dates till publication of the election result.

- (b) Prior to the publication of the election schedule, the petitioner along with another member issued several letters to the respondents seeking intervention from their end in order to hold free and fair election. The said letters also set out different allegations.
- (c) It is stated that a draft voter list was prepared which contained the names of same person multiple times and also contained names of dead persons. The office of the respondents by order dated 08.01.2024 as evident as Annexure-B to the writ petition directed the Society and the Committee formed for holding election to correctly prepare the voter list and thereafter, to hold election. Subsequently, final voter list was published and the said list contained the errors which were brought to the attention of the respondents.
- (d) It is stated that, the petitioner once again requested the respondent to direct the Society and the Committee of the Society to prepare the voter list correctly and then proceed with holding of election. The respondents took no steps and the Society is proceeding to hold the election on the basis of improperly prepared Voter List. This requires intervention from this Court and hence the petitioner filed the instant writ petition and obtained the present Rule.

The respondents No. 4 has contested the Rule by filing an application for discharging the Rule. His case as set out in the discharging the rule, in short is that as per Rule 26(2) of the Samobay Samity

Bidhimala, 2004 for holding the election of Managing Committee of the Samity, the respondent No. 2 made a Adhoc committee dated 18.12.2023 for period of 3(three) months only for holding election of the management committee, and after taking charge the said ad-hoc committee announced the election scheduled on 31.12.2023 and as per rule 32(1) of Somobay Somity Bidhimala 2004, they published result of uncontested winning candidates on 29.01.2024 and after completing the election process when they come to know court order dated 23.01.2024 and stayed the further proceedings of the special General meeting by their letter dated on 01.02.2024.

No one appears for the petitioner in support of the Rule, when it was taken up for Rule hearing. This writ petition has been appearing in the daily cause list for quite a long time but no one appeared for the petitioner though the matter come up for hearing in the list with the name of the learned Advocate appearing for the petitioner. However, Mr. A B M Altaf Hossain, the learned Senior Advocate for the respondent No. 4 submits that the instant case is covered by the decision of the Appellate Division and for that reason this writ petition can be decided by us even without hearing the petitioner.

This writ petition is filed on the following grounds-

- (a) that voting right is a sacrosanct right and is statutory and constitutionally guaranteed and the respondents failed to appreciate that unless the final Voter List is corrected and election is permitted to be held on the basis of the erroneous final voter list, it would result in holding of an unfair election; such

failure of the respondents to pass necessary orders directing holding of election subsequent to preparation of correct Voter list tantamount to failure to exercise power and without lawful authority. (b) that the impugned failure of the respondents is without lawful authority and of no legal effect in that the respondents failed to appreciate that the election can be held only upon absolute compliance of the order dated 08.01.2024.

Mr. A.B.M. Altaf Hossain, learned Senior Advocate with Mr. Rusho Mostafa the learned Advocate for the Respondent No. 4, he submits that pendency of the writ petition election process was concluded by announce the winning candidates as per rule 32(1) of Somobay Somity Bidhimala 2004 and when the previous committee and new the elected Members could not called General Meeting and due to expired of the previous interim(Adhoc) committee, the respondent No.2 formed a new interim(Adhoc) committee for conduct regular activities and delegating responsibility to elected committee vide dated 08.04.2024 and as such, the rule of the instant writ petition has become in-fructuous and thus the rule may kindly be discharged as being in-fructuous.

We have considered the submissions of the learned Advocate for both the sides, perused the impugned proceedings, supplementary affidavit and an application for discharging the Rule.

The moot question to be resolved in the question, the Rule is whether has become infructuous or not.

It appears that Rule was issued and to pass an order of direction to ensure preparation of the new and correct votor list for the purpose of

holding the election in question. In the meantime, the proceeding of holding of the election of Dhaka co-operative house building society was stayed till preparation of such voter list and also further directed to hold election after correction of voter list in accordance with law. As could be seen that the applicant respondent No. 4 have been performed their duty by ensure the new and correct voter list dated 09.01.2024 for holding the election in question, and election commission published final candidate list on 25.01.2024, then they published a list of valid candidates on 27.01.2024, finally the election commission published list of result uncontested winning candidates on 29.01.2024 as per Rule 32(1) of Bidimala, 2004.

Considering the above discussion, the Rule being devoid of merit is bound to fail.

Accordingly, the Rule is discharged. The earlier order of direction at the time of issuance of the Rule is hereby recalled and vacated.

Communicate the judgment and order at once.

No order as to costs.

**S.M. Masud Hossain Dolon, J:**

I agree.