

Present:

Mr. Justice Mohammad Bazlur Rahman

and

Mr. Justice Md. Ruhul Quddus

Writ Petition No.1273 of 2012

Hajee Helal Uddin Ahmed

...Petitioner

-Versus-

National Sports Council and others

...Respondents

Mr. Subrata Chowdhury with Mrs. Reshma Sultana
with Mr. Md. Nasir Islam, Advocates

... for the petitioner

Mr. A. F. M. Mezbah Uddin with Mr. K. M. Zahid
Sarwar, Advocates

... for respondent 1

Mr. A. H. M. Kamruzzaman, Advocate

í for added respondent 5

Judgment on 22.11.2012

Md. Ruhul Quddus, J:

This Rule at the instance of a sports organizer was issued to examine the legality of Memo No. এনএসসি/১১৯/এইচ/জেন/২০০৯ dated 19.1.2012 issued by National Sports Council (annex-D) nominating seven members in the general body of Divisional Sports Association, Sylhet and the order dated 30.1.2012 passed by the Election Commissioner for the election, 2012 of the association overruling Objection No.7/2012 (annex-E) that was raised by the petitioner against the voter list prepared for holding the election.

The petitioner is the senior most sports organizer and social activist in Sylhet. He is a Member of the Sports and Cultural Trust Board, General

Secretary of Victoria Sports Club, Councillor of District Sports Association, Vice-President of District Football Committee, Sylhet. He is also a former Member of Bangladesh Football Federation and National Sports Council, Dhaka. He filed an application on 3.12.2011 before the President of the Divisional Sports Association (respondent 2) for his nomination as a member of the general body of the association.

On expiry of the tenure of the existing executive committee of the Sylhet Divisional Sports Association, the Election Commissioner (respondent 3) declared schedule on 18.1.2012 for holding the election on 12.2.2012 towards formation of its executive committee. According to the schedule, the Election Commissioner prepared and circulated a draft voter list on 25.1.2012 containing 40 voters. In the meantime the National Sports Council nominated seven persons to be included in the general body of Sylhet Divisional Sports Association under Article 7 (14) of its model Constitution and communicated it to respondent 2 by a letter as contained in Memo No. 00.266.018.06.02.004.2008-934 (2) dated 22.12.2011. The petitioner filed a written objection being No.07/2012 against the draft voter list on the plea that the persons nominated by the National Sports Council had no sports background and eligibility to be the members of general body.

The Election Commissioner heard the petitioner and overruled the objection by order dated 30.1.2012 on the ground *ও* আপীলকারীর বক্তব্য শুনলাম, বিভাগীয় ক্রীড়া সংস্থার গঠনতন্ত্র অনুচ্ছেদ-৭ মোতা-বক সভাপতি, জাতীয় ক্রীড়া পরিষদ, ঢাকা ১৪ নং ক্রমিক সাধারণ পরিষদ ৭ (সাত) জন সদস্য মনোনয়ন প্রদান ক-র-ছন বিধায় নিম্নস্বাক্ষরকারীর করণীয় কিছু নেই। আ-বদন না মঞ্জুর করা হ-লাও। In that event the writ petitioner moved in this

Court with the instant writ petition challenging the aforesaid nomination of seven members by the National Sports Council (annex-D) and the subsequent order dated 30.1.2012 passed by the Election Commissioner (annex-E), upon which the Rule and an interim order of stay was issued.

National Sports Council (respondent 1) and added respondent 5 Jumma Abbas Raju contest the Rule by filing two separate affidavits-in-opposition. Respondent 1 in its affidavit contends that the application filed by the writ petitioner for his inclusion in the general body was duly considered by the President of Divisional Sports Association, who sent a broad list of 14 sports organizers including the petitioner to the National Sports Council to nominate seven members among them as members thereof. Accordingly the National Sports Council in exercise of its lawful authority nominated seven members of the general body of Sylhet Divisional Sports Association. There was nothing wrong in such nomination.

Added respondent 5, one of the seven members nominated by the National Sports Council, contends in his affidavit that he participated in National Youth Cricket Tournament and National Cricket Tournament. He is the Publicity Secretary of Sylhet Cricket Association and is the former member of Bangladesh Cricket Board (BCB) having experience of organizing different important international cricket matches. He also contends that the seven members nominated by National Sports Council are renowned sportsmen and have full competence to be the members of the general body.

Mr. Subrata Chowdhury, learned Advocate appearing for the writ petitioner submits that the petitioner is the senior most sports organizer in Sylhet having a brilliant career in sports. Article 7(14) of the Model

Constitution of the Divisional Sports Association provides that it would nominate seven renowned sportsmen having international/national medal or prize, but in the present case the National Sports Council did not fulfill this condition in nominating the seven members and therefore, the impugned nomination (annex-D) is without jurisdiction because of lack of jurisdictional fact.

On the other hand, Mr. A. F. M. Mesbah Uddin, learned Advocate appearing for respondent 1 submits that the instant writ petition, wherein the affairs of a Divisional Sports Association have been challenged, is not maintainable. Moreover, before moving this application the writ petitioner has not exhausted the remedy of appeal as provided in article 9 of the Model Constitution, therefore, the Rule is liable to be discharged for not exhausting the alternative remedy as well. In support of his contention on maintainability, he refers to an unreported judgment passed in Writ Petition No.452 of 2011 (Firoj Ahmed and seven others Vs. The Secretary, National Sports Council and four others) analogously heard and disposed of with three other writ petitions, wherein one of us was a party.

Mr. A. H. M. Kamruzzaman, learned Advocate appearing for added respondent 5 submits that the members who were nominated by the National Sports Council are renowned sportsmen and sports organizers. Respondent 1 in its lawful discretion rightly exercised the authority under article 7(14) of the Model Constitution in nominating the members and as such there is nothing to interfere with by this Court sitting in writ jurisdiction.

On perusal of the records, it appears that the President of Divisional Sports Association, Sylhet sent a list of 14 sports organizers including the petitioner to the National Sports Council (annex-1 to the affidavit-in-opposition filed by respondent 1) to nominate seven of them as members of the general body of the association, on receipt of which the Council nominated the seven whose names were placed against serial Nos.1-7 in the list. On the basis of such nomination, they were included in the general body of Sylhet Divisional Sports Association and consequently were made voters for the ensuing election. In such a position there was nothing wrong on the part of the Election Commissioner in overruling the objection raised by the writ petitioner. This part of the Rule was challenged for an ancillary relief and it depends on success of the first part of the Rule i.e. the impugned nomination made by the National Sports Council (annex-D). The national Sports Council has got regulatory power upon all the affiliated associations including the Divisional Sports Associations under the National Sports Council Act, 1974. Article 7 (14) of the Model Constitution of the Divisional Sports Associations framed by the National Sports Council in exercise of power under section 20A of the said Act confers authority on its Chairman to make such nomination.

We have gone through the unreported decision cited by the learned Advocate for the petitioner, wherein the Rule was held to be not maintainable on the reason:

“ As the matter relates to disputed question of facts relating to internal affairs of Satkhira District Sports Association and the writ petitioners without going to the proper forum that is the appellate authority against the decision of the election commissioner came before this Court and obtained this Rule.ö

The National Sports Council is a statutory authority, therefore, its action in nominating the members of the general body of a Divisional Sports Association can be challenged under article 102 of the Constitution. The impugned nomination was passed at the instance of the Chairman of National Sports Council himself, who is holding its highest position. In that view of the matter, an appeal before the same Council under article 9 of the model Constitution is not an efficacious and alternative remedy. We therefore, do not accept the contention of the learned Advocate for respondent 1 that the writ petition is not maintainable.

However, we do not find that the seven members nominated by the National Sports Council are not competent to be the members of the general body of a Divisional Sports Association or that there is any procedural illegality. In absence of any such illegality or lack of jurisdictional fact, the impugned nomination, which has been made in discretion of the Chairman of National Sports Council, is not amenable to writ jurisdiction.

Accordingly, the Rule is discharged without any order as to cost. The interim order of stay passed earlier is vacated.

Mohammad Bazlur Rahman, J:

I agree.