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

WRIT PETITION NO. 1168 OF 2013

IN THE MATTEROF:
An application under Article 102(2) of the Constitution of the Peopleôs Republic of Bangladesh.
And
IN THE MATTER OF:
Md. Abul Bashar
é é é é é é .Petitioner
Versus
Government of Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Ramna, Dhaka and others
é é é é é Respondents
Mr. Khurshid Alam Khan with
Mr. Kazi Md. Arifur Rahman, Advocates
é é .For the petitioner
Mr. Samarendra Nath Biswas, A.A.G
é é .For the respondents

Heard on: 06.03.2014, 01.04.2014, 10.04.2014, 29.04.2014
Judgment on: 04.05.2014

Present:
Mr. Justice M. Moazzam Husain
And
Mr. Justice Md. Badruzzaman

M. Moazzam Husain, J

This Rule was issued calling upon the respondents to show cause as to why the letter dated 05.12.2012 issued by the Senior Assistant Secretary, Bichar Shakha-7 (Respondent No.2) creating a new jurisdiction of Nikah Registrar in No.7, Bhadra Union Nagarpur, Tangail in violation of Rule 13(*Uma*) of the Muslim Marriages and Divorces (Registration) Rules, 2009 shall not be declared to have been passed without lawful authority and is of no legal effect.

The petitioner is a citizen of Bangladesh having requisite qualifications to be appointed as Nikah Registrar. Father of the petitioner was the Nikah Registrar of the said Bhadra Union No.7, who retired from the said post on 01.01.2008. The post of Nikah Registrar thus fell vacant on account of retirement of the petitionerôs father. The local Chairman requested the Respondent No.3 for appointment of the petitioner as Nikah Registrar for the said Union. The petitioner having requisite qualifications himself also filed an application to be appointed as such addressing the District Registrar, Tangail on 29.01.2008.

On 22.02.2008 a written examination was held and the result of the said examination was published on 24.02.2008. The petitioner along with others came out successful in the examination. He was entitled to preference over others as per law as a son of the preceding Nikah Registrar of the Union. On 07.02.2008 Respondent No.2 accordingly issued a letter addressing Respondent No.3 recommending the name of the petitioner for appointment as Nikah Registrar.

But in total disregard of the said recommendation the Respondent No.6 appointed one Md. Abdul Alim (Res-7) as Nikah Registrar by his office Memo dated 26.02.2008.

The petitioner being aggrieved by the appointment filed Writ Petition No. 2011 of 2008 before the High Court Division and obtained a Rule. The writ petition was heard on 03.03.2010 by a Division Bench of this Division and after hearing the parties their Lordships were pleased to make the Rule absolute with some observation by a judgment and order dated 10.03.2010. The Respondent No.4 of the said writ petition ie, Respondent No.7 of the instant writ petition filed a Leave Petition bearing No. CP No. 1089 of 2010 in the Appellate Division. The Appellate Division after hearing dismissed the leave petition by its order dated 17.11.2011 affirming the judgment and order of the High Court Division. Accordingly the petitioner was appointed as Nikah Registrar for No.7, Bhadra Union, Tangail *vide* an office Memo dated 29.07.2012 of the Respondent No.2 which was duly published in the official gazette on 29.07.2012.

While the petitioner was performing his duties as Nikah Registrar of No.7, Bhadra Union the Ministry of Law Justice &Parliamentary Affairs all on a sudden issued a letter under the signature of Respondent No.2 *vide* his office Memo dated 05.12.2012 creating a new jurisdiction for another Nikah Registrar curtailing the jurisdiction of the petitioner purportedly in exercise of power under Section 4 of the Muslim Marriages & Divorces (Registration) Act, 1947, (hereinafter referred to as ñthe Actò).

Being aggrieved by the Memo issued by the Ministry the petitioner obtained the instant Rule on different grounds. He raised a number of contentions which practically boil down to three, namely, that the Government is not empowered by Section 4 of the Act to Divide a Union territory for the purpose of creating a new jurisdiction for another Nikah Registrar in that an Union is the minimal territorial unit of a Nikah Registrar as per Rule 13(*Uma*) of the Muslim Marriages & Divorces (Registration) Rules, 2009 (hereinafter called as the ñ The Rulesò); the Respondent No.7 is not the resident of Ward No. 5,6,7,8 and 9, therefore, he is not entitled to be appointed as the Nikah Registrar for the newly created jurisdiction and finally the impugned Memo was issued in colorable exercise of power at the behest of Respondent No. 7 only to accommodate him there not for the interest of the people. He put in two supplementary affidavits to show, *inter alia,* that there was no proposal or recommendation from the local bodies or administrative unit for creating the new jurisdiction, therefore, the Memo dividing the jurisdiction is tainted with bad faith made for collateral purpose.

Mr. Khurshid Alam Khan, learned Advocate appearing for the petitioner submits at the outset that the Rules were framed under the Act in order to carry out the purpose of the Act and Rule 13(*Uma*) of the Rules, 2009, earmarks, amongst others, an Union as the minimal territorial unit of a Nikah Registrarôs jurisdiction. It cannot be divided, curtailed or reduced in exercise of power under Section 4 of the Act. Secondly, the power conferred by Section 4 must be used *bona fide* for public interest but there no demand raised by the local people or proposal made by the local bodies or administrative unit asking for such division. The petitionerôs Union was divided by the Ministry in colorable exercise of power only to accommodate Respondent No.7 who lost his battle against the petition up to the Appellate Division for the post. He pointed out that indication of undue influence exerted by Respondent No.7 in matters of issuance of the impugned Memo is clearly manifested in the impugned Memo itself. The adjacent Unions with similar

population and number of marriages, he stressed, are running with one Nikah Registrar each but no such division is brought about in any of them.

Mr. Samarendra Nath Biswas learned Assistant Attorney General in his bid to defend the Memo submits that Section 4 of the Muslim Marriages and Divorces (Registration) Act, 1974, empowers the Government to extend, curtail or otherwise alter the jurisdiction of a Nikah Registrar if and when necessary in the interest of the people and here Government acted rightly and lawfully in the interest of the people. He found it difficult to answer the question as to whether there was any local demand or proposal sent to the Ministry asking for any division of the Union for the purpose of creating a new jurisdiction for appointment of another Nikah Registrar or is there any other reasonable basis for taking such a decision where other adjacent Unions are remaining undisturbed in the similar circumstances. Adjournments were allowed to facilitate him in order to meet the queries. He still found to be helpless and devoid of answer. He, however, stressed upon the power of the Government so to do in the public interest and referred to a number of cases namely, *Mlv Md. Abdul Khiurshid Alam v Bangladesh & others*, 50 DLR (AD) 82; *Maulana Kazi Mohammad Shahadbddin v Bangladesh & others*, 9 MLR 14; *Manjurul Haque v Bangladessh & others,* 51 DLR 261; *Fazlur Rahman v Bangladesh & others*, 4 BLC 526 and Saiful Islam (Md) v Bangladesh & others reported in 66 DLR 310 to demonstrate how indisputable the power of the Government is in bringing about specified changes in the jurisdiction of a Nikah Registrar.

We have gone through every single decision referred to us by the learned Assistant Attorney General. Nowhere is it said that the power under Section 4 may be exercised at will or on request by an interested person or on a DO letter issued by a dignitary having nothing to do with the affairs of the concerned Ministry. The common strand that runs throughout the judgments is that power of the Government to bring about change in an existing jurisdiction of a Nikah Registrar is there and the Government, in fit circumstances, can extend, curtail or otherwise alter the limits of any area for which a Nikah Registrar has been licensed. Mr. AAG tried to lay stress on Fazlur *Rahman* (*supra*) where the Court appears to have seen the power in a wider perspective and observed that the Government can so act even without notice to the Nikah Registrar and neither the principle of natural justice nor the question of vested right can be called in aid to qualify, impair or circumscribe the power of the Government in carrying out its duty under law. This is a view which, by no stretch of imagination, can be construed to mean arbitrary or unreasonable exercise of public power by the Government or in similar circumstances by any public authority. Rather *Saiful Islam* (*supra*) seems to be representative of the common trend of judicial opinion in which Ruhul Quddus, J, held that the statutory discretion is never absolute and must be exercised within the limit of law set by the standard of reasonableness and fairplay and the change can be brought out only if it is found to be imperative for the interest of the public. In that case the affected Nikah Registrar, his Lordship added, should be given an opportunity to be heard before the division is effected and, in all fairness, he should be given an option to choose the part of the Union he likes to work for. The argument of the learned AAG seeking to defend the Memo purportedly issued in public interest failed to lend support from the decisions cited by him rather favors the contention of the petitioner that the same has nothing to with public interest in that nothing is on records to demonstrate that any requisition or proposal on behalf of the local

residents to create a new jurisdiction within the Union was has ever been made from any of the local bodies or local administration upon which the Memo could reasonably be issued.

Back on records it appears that the impugned Memo was issued by the Ministry of Law, Justice & Parliamentary Affairs on 05.12.2012 under the signature of a Senior Assistant Secretary (Res-2). The language of the Memo may fittingly be quoted:

MYcRv¤Gx evsjv `k miKvi
AvBb, wePvi I msm` welqK g¤Gbvjq
AvBb I wePvi wefvM
wePvi kvLv-7
miKvix cwienb cj feb,
mwPevjq wjsK ivW, XvKv|

bs wePvi-7/2Gb-13/2012- 826 ZwiLt 05/12/2012 Bs|

welqt UvsMvBj Rjvi bvMici Dc Rjvi 7 bs fv`v BDwbq bi 5,6,7,8 I 9bs IhvW mgn KZbceK bZb Awa ¶Î mwó Ges DI Awa ¶ Î wbKvn iwRóvi wb qvM cms M|

Dch³ wel q wb `wkZ n q Rvbv bv hv Q h, The Muslim Marriage and Divorces (Registration) Act,1974 Gi 4 avivq c`Ë ¶gZve j UvsMvBj Rjvi bvMici Dc Rjvi 7bs fv`v BDwbq bi 5,6,7,8 I 9 bs IqvWmgn KZbceK GKwU bZb Awa ¶Î mwó Kiv n jv| DI bZb Awa ¶ Î wbKvn iwRóvi wb qv Mi wbwg Ë wewa gvZv eK Dc `óv KwgwU KZK c¨v bj cmZ K i g¤GYvj q ci Yi Rb¨ Avcvbv K ejv n jv| GKB mv _ Rbve gvt Avãj Awjg Gi wbKU n Z cvß Av e`b c Îi Qvqwjwc ciYceK wewa gvZv eK Dnv Dc `óv KwgwU Z Dánvc bi Rb¨ Avcbv K ejv n jv|

mshI - 10 cvZv

cvcK,
mve- iwRóvi
bvMici, UvsMvBj|

mvt A¯có
05/12/12
(gvt gvng`j Kwig)
wmwbqi mnKvix mwPe
wePvi kvLv-7
dvb-9558287

A plain reading of the Memo suggest that the Ministry in exercise of power under Section 4 of the Muslim Marriages and Divorces (Registration) Act, 1974, straightaway divided the Union of the petitioner carving out therefrom five Wards. There is no indication whatsoever why such a division became necessary or what prompted the Ministry so to do specially when all the adjacent Unions are undeniably running with only one Nikah Registrar each. Nor is there anything to suggest that local residents were in need of a division of the kind. In the Memo the local Sub-Registrar was directed to get a panel of Nikah Registrars made by the Advisory Committee having placed before it the application received from Abdul Alim (Res-7). The Memo, read between the lines, leaves us with no doubt that Respondent No 7, a person who unsuccessfully fought against this petitioner for the post up to the apex court of the country, did not leave the battleground merely changed course. This time he chose to open a front at the top of the administration ie, the Ministry and kept haunting until the Memo was issued creating a new jurisdiction within the Union understandably for his appointment. It goes without saying that the Ministry acted arbitrarily, of its own, with collateral purpose only to accommodate a particular person not for the interest of the people. It is difficult to say that the decision taken *suo motu* by the Ministry does fit in any accepted standard of a civilized legal system. Unfortunately for us,

this is not an isolated instance of desperate abuse of statutory discretion. It is representative of many such abuses of public office.

In a country like ours arbitrary exercise of power by government departments and public authorities is usually frequent. Even in advanced countries of the West instances of acting beyond authority and abuse of power is scarcely any less which is best captured by the percipient remark made by Maitland long ago:

> *"If you take up a modern volume of the Queen's Bench Division, you will find that about half of the cases reported have to do with rules of administrative law..."*

True it is that abuse of power is there everywhere around the world. But they in most cases markedly differ from our abuses in degree as well as in kind. There it is rarely tainted with bad faith or intentional dishonesty and bulk of the actions and decisions arise out of ignorance or misunderstanding. The fact is better reflected in the remarks of Wade & Forsyth (*infra*-Page 352): *"It is extremely rare for public authorities to be found guilty of intentional dishonesty; normally they are found to have erred, if at all, by ignorance or misunderstanding. Yet the courts constantly accuse them of bad faith merely because they have acted unreasonably or on improper grounds*.ò In our country the abuse sometimes turns so nakedly arbitrary and desperately defiant of settled norms of discharging public duties that they bring reflection to bear upon the whole administration. It often so happens that executive apparatus are set on motion on a DO letter of a dignitary having nothing to do with affairs of the concerned ministry which, we believe, is unknown in the advanced societies.

It is no denying that modern governments demand power as wider as possible. Ever expanding state functions seeking to address the multifarious problems and needs of citizens and their wellbeing from cradle to grave gave rise to huge administrative apparatus. ôIntensive governments of the modern kind cannot be carried out without a great deal of discretionary power. Parliamentary draftsmen strive to find new forms of words which make discretion even widerô which on their face might seem absolute and arbitrary.

It is axiomatic that wider is the discretion greater is the scope for abuse. Public functionaries as human beings are not free from personal bias, beliefs and prejudices to influence their judgments which tend to drive them out of the limit of law. Total eradication of abuse of power is in that sense is an unattainable goal. We, therefore, are not as much concerned about mere abuse as we are about ignorance and misunderstanding that leads to such off-beat and ominous exercise of power as is incapable of explanation upon any proposition of modern administrative law principles. When we are desperately in need of a good and efficient administration for maintenance of law and order, ensuring administrative justice and pushing ahead with various development programs taken by the Governments we are experiencing gradual degeneration in every phase of our administration and falling standard of efficiency and professionalism with resultant increase in most unusual and shocking abuse of administrative discretion which not only contributing to slowing down progress but also destroying the key institutions of the State at the same time sending abroad an embarrassing message about us as a nation. It is, therefore, imperative to equip our public functionaries with minimal Constitutional and legal perspective of their offices and duties so that they cannot take wild departure, as many

of them often do, from the basic requirement of law while discharging their duties rather than waiting for judicial cure from case to case at the cost of poor litigants, time and public money.

Viewed in the light, we feel called to restate as far as possible in lay terms some elementary words providing insight into inner significance of statutory discretion and how the discretionary power is meant to be exercised within the limit of law *vis-à-vis* significance of a public office and legal status and duties of public functionaries so that instances of shocking abuse of the present kind can be held back at a minimal level. The executives need not attain mastery over the vast constitutional and administrative literature nor is it expected of them. It would suffice if they remember two things: first, Bangladesh is a Republic and a representative democracy where rule of law forms the bedrock of the Constitution. All power of the Republic here, as the Article 7 of the Constitution goes, belongs to the people and their exercise is effected on their behalf only under and by the authority of the Constitution which is nothing but the solemn expression of the will of the people and the supreme law of the land. It must never be forgotten that they are paid by the people to exercise their power on their behalf only to serve their interest. They are public servants, pure and simple, nothing more nothing less. In that sense, they stand to the people in a fiduciary relationship entrusted to do administrative justice analogous to that of a trustee strictly in accordance with the scheme and policy of law made by the peopleôs representatives sitting in the Parliament. Every power conferred upon the government, its department and other public authorities have, therefore, a public purpose implied in it for the precise reason that the Parliament while conferring power does it on behalf of the people for the benefit of the people and Parliament cannot be presumed to have intended it to be used arbitrarily or on considerations extraneous to the scheme and purpose of law.

Put differently, exercising of public power for any purpose other than what is contemplated in law is tantamount to acting beyond the limit of law ie, *ultra vires* as it is technically called. If we not so far wrong, exercise of public power for private purpose for that matter on a DO letter, so to speak, is not only illegal but also defiant of constitutional or legal mandates which is the *raison d'être* of administrative justice.

In the second place, the question of language by which the power is conferred. Discretionary power would usually be wider. There is no way back. Because, modern governments demand power as wider as possible. There are valid reasons behind it as well. Ever expanding state functions seeking to address the multifarious problems and needs of citizens and their wellbeing from cradle to grave gave rise to huge administrative apparatus. óIntensive governments of the modern kind cannot be carried out without a great deal of discretionary power. More often than not the empowering phraseologies might seem absolute and arbitrary which may be illustrated by few examples, such as: ñif the authority deems fitò; ñif in the opinion of the Commission it is expedient so to doò; if the Government is satisfied that it is expedient for public interest to send him to compulsory retirementò; ñif the police officer has reason to believeò or as in the present case ówhenever the Government deems fit so to doô. The phraseologies are undoubtedly worded in wide, subjective and permissive languages. The public functionaries have to work amid the juggleries of expressions and phrases conferring upon them wide and subjective power to take their actions and decisions. The wordings need not confuse them. One guiding principle must be embedded in their thoughts and minds that there is no such thing as absolute or

arbitrary administrative power. They must act within the limit of law. None of their actions or decision can be as unreasonable as no reasonable man applying his mind to the attendant facts, would have taken it. This is a basic standard to be kept in view while discharging public duties. The standard has found eloquent expression in the words of Lord Green in *Associated Provincial Picture House v Wednesbury Corp* reported in (1948) 1 KB 223. In the said case Lord Green observed that a decision is unreasonable ôif it is so outrageous in defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at itõ. This aphorism is known as ôWednesbury unreasonablenessõ which is followed by the courts, at least in the common law world, as an standard to test reasonableness of an administrative action or decision.

Save in case of purely administrative orders or notes, any order affecting right or interest of a person is *quasi* judicial in nature and must of necessity be issued or passed in accordance with the procedure provided by law. Even if the law is silent about procedure and the power is vested in subjective and permissive language certain procedural safeguard against abuse must be implied in the Act so that the person adversely affected is not taken by surprise and get a reasonable opportunity to be heard before he is condemned or his rights or interests are taken away as well as ôthe public may be able to rely on the law to ensure that all this power may be used in a way conformable to its ideas of fair dealing and good administration.õ That means power must be exercised justly, fairly and reasonably on considerations of relevant materials *vis-a-vis* the right and interest of the person affected. In the words of Wade and Forsyth:

> *"Parliament when conferring power intends that power to be used fairly and with due consideration of rights and interests adversely affected… If an Act empowers a minister to act as he thinks fit in some matters, the court will read into the Act conditions requiring him to act within the bounds of reasonableness, to take account of relevant but not of irrelevant considerations, to conform to implicit policy of the Act, and to give a fair hearing to anyone prejudicially affected."* (HWR Wade & CF Forsyth: *Administrative Law*, 10th Ed, Pages 30-31).

In our constitutional dispensation safeguard against abuse of power is more comprehensive and even wider than the due process clause of American constitution inasmuch it is not confined to life, liberty and property only and encompasses the ôwhole range of human activity and attracted when a person is adversely affected by any state actionõ. Article 31 of the Constitution by necessary implication contemplates ôlawõ as reasonable and non-arbitrary that is commensurate with rule of law. And rule of law is opposed to arbitrariness. Under our constitution even Parliament is barred from making any law no matter substantive or procedural which is arbitrary, capricious and unreasonable. Because, the fairest of procedure may often prove derogatory to enjoyment of life, liberty, property or any other right or privileges if the substantive law is unreasonable, unjust, overbroad and arbitrary.

Reverting back to the case, the impugned Memo was issued creating a new jurisdiction for a Nikah Registrar to be appointed carving out five Wards of the Union for which the petitioner was licensed for working as Nikah Registrar. The discretion is exercised under Section 4 of the Muslim Marriages & Divorces (Registration) Act, 1974. We have already observed that

the decision taken by the Ministry is grossly arbitrary, manifestly unreasonable and tainted with bad faith. Let us now have a glance through Section 4 to see how the language conferring power is worded and how that leaves scope for the Ministry to act in the manner it did.

> ***Section 4***. *For the purpose of registration of marriages under this Act, the Government shall grant licenses to such number of persons, to be called Nikah Registrars, as it may deem necessary for such areas as it may specify:*
>
> *Provided that not more than one Nikah Registrar shall be licensed for any one area:*
>
> *Provided further that the Government may, whenever it deems fit so to do, extend, curtail or otherwise alter the limits of any area for which a Niklah Registrar has been licensed. (Emphasis added)*

From a bare reading of the section it appears that second proviso of the section contains the empowering phrase which confers power upon the Government to bring about changes in a Nikah Registerôs jurisdiction ñwhenever it deems fit so to do.ò This is a phrase which is obviously worded in wide, subjective and permissive language and seemingly looks absolute. Misunderstanding the phrase or in other words failure to take the power in its constitutional and legal perspective may naturally follow if the authority is ignorant of their position as public servants (not masters) and totally unaware of the meaning of Parliament and the necessary intendment of law made by it. It is often difficult to believe that they suffer from as much ignorance and misunderstanding as is incapable of understanding the concept of republic; their duty as public servants and by the same token incapable of taking the empowering phrase, irrespective of its wordings, in their true perspective. But many of their actions and decisions are indicative of misunderstanding on its face, which is possibly is of a different kind clearly distinguishable from the ómisunderstandingô meant in the passage of Professor Wade (*supra*). This, as we feel, is a egocentric and blissful misunderstanding emanating from colonial mindset of the members of our bureaucracy many of whom want to keep the same alive so that absolute power may be enjoyed where possible which is otherwise impossible once they are relegated to the status of true public servant, a concept, they are attitudinally opposed.

In dividing the jurisdiction of a Union directly from the centre the persons running the affairs of the Ministry remained totally unconcerned about the local people, their representative local bodies and the local administration. Furthermore, bad faith and irrelevant consideration in discharging public duty is manifest in their Memo. They did not bother about the fact that the person named in their Memo lost up to the Apex Court in his fight against this petitioner for the post of Nikah Registrar of the Union. They did not bother as to the necessity of such division while other adjacent Unions are running with one Nikah Registrar each in similar circumstances. In dividing the Union they presented a desperate demonstration of grotesque feat of arbitrariness far removed from the established principles and guidelines of exercising statutory discretion.

The instance created is somewhat reflected in *Roncarelli v Duplessis* reported in 16 DLR (2d) 689, a Canadian case, where a restaurant proprietorôs liquor license had been cancelled by a Quebec Liquor Commission at the instigation of the Prime Minister of Quebec, for the reason that the proprietor habitually stood bail for members of the sect of Jehovahôs Witnesses, who were a nuisance to the police. The Supreme Court awarded damages against the Prime Minister and stigmatized the cancellation holding:

> *In public regulation of this sort there is no such thing as absolute and untrammeled discretion…Discretion necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption…[It] is a gross abuse of legal power expressly intended to punish him for an act wholly irreverent to the statute, a punishment which inflicted on him, , as it was intended to do, the destruction of his economic life as a restaurant keeper within the province.*

The Court went further to say:

> *[This] is an outstandingly clear example of the abuse of executive power; this case illustrates the personal liability of ministers and possibility of a remedy in damage for maladministration.*

Reasonableness, in the Wednesbury sense, requires that (continuous pressure or insistence, as often is the case here, from different corners notwithstanding) the Ministryôs bounden duty was to look back to the local people, their representative bodies as well as the local administration before taking the decision. Procedural fairness demands that the affected Nikah Registrar needs be made a party to the process and ascertain how hard he is going to be hit in terms of his earning and livelihood. And after completing the process if the curtailment appears imperative for the benefit of the local residents Government, as of duty, would take recourse to the power conferred by Section 4 of the Act and create a new jurisdiction within a Union or other territorial jurisdictions, where it is so needed, on consideration of all the relevant materials on records. Or conversely, the division might be effected on the requisition made by the local Union Parishad on the basis of a resolution with invitation to the incumbent Nikah Registrar to be present in the meeting and allowing him to speak out his opinion, if any, to be recorded and sent with the requisition, may be through the local administration. The decision being *qusai* judicial, the process, in all fairness, should start from the local government level, as bodies directly in touch of the people acquainted with their peculiar problems not from the centre. The later course, in our opinion, is sounder simply because of the fact that the local bodies are best judge of the local problems and it is our constitutional obligation to promote local governments.

Power under Section 4 of the Muslim Marriages and Divorces (Registration) Act, 1974, or for that matter any statutory power conferred upon the Government, its departments and other public authorities can never be unfettered far less absolute to be used at will. The authority vested with power must, of duty, exercise them in the light of the scheme and object of the law vesting such power strictly keeping in view the ultimate benefit of the people.

It is argued at the Bar that here license of the petitioner is not cancelled, therefore, the Ministry or the Union Parishad is not required to ask the affected Nikah Registrar to say anything. We have no hesitation to reject the argument precisely for the reason that he is the man who bears the highest stake as one suffering loss of income, if any, by the action. If for the division his income significantly reduced affecting his livelihood meaning thereby that the number and volume of marriages and divorces is not as high as to justify creation of a new jurisdiction. In that case Government may not find it feasible to take the decision for curtailment. Secondly, proposal

for division may not always be *bona fide* and sent for collateral purposes. He, therefore, must have scope to set his face and get his voice heard in any form so that Government may get a complete picture of the necessity canvassed and take appropriate decision.

In case of division of territorial limit Ruhul Quddus, J went a bit further to say that, if in the public interest division becomes imperative, an option should be given to the incumbent Registrar to choose any of the two jurisdictions he likes to work for. We are in respectful agreement with the view taken by his Lordship, if the said Nikah Registrar is not otherwise disqualified.

For what we have stated above we find substance in the submission of Mr. Khan that the impugned order is tainted with bad faith issued at the behest of the interested quarters and not in the interest of the local people. The Rule, therefore, bears merit.

In the result, the Rule is made absolute. The impugned Memo carving out a new jurisdiction from No. 7, Bhadra Union in the District of Tangail is declared to have been issued without lawful authority and is of no legal effect.

The order of stay granted earlier is hereby vacated.

There would, however, be no order as to cost.

Md. Badruzzaman, J

I agree