

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

WRIT PETITION NO. 5091 OF 2014

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Md. Ataul Goni Sheikh and others

.....Petitioners

-Versus-

The People's Republic of Bangladesh represented by the
Secretary, Ministry of Railway, Bangladesh Secretariat,
Ramna, Dhaka and others

..... Respondents

Mr. Md. Saidul Alam Khan, Advocate

.....For the petitioners.

Mr. Shaheed Alam, Advocate

...For the respondent nos. 3-10.

Heard on 07.05.2017, 15.05.2017,
18.05.2017 & 31.05.2017.

Judgment on 09.07.2017.

Present:

Mr. Justice Moeenul Islam Chowdhury

-And-

Mr. Justice J. B. M. Hassan

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 upon them to issue appointment letters in favour of the petitioners in conformity with the final merit list made for the purpose of appointing 78 persons to the posts of MLSS who were selected in due compliance with the Bangladesh Railway Appointment Circular vide No. Ba:/Re:/Paschim-3/2010 dated 21.10.2010 approved under the signatures of the respondent nos. 5-10 (Selection Committee) and why the Memo No. AST/601/Niog/10(W)/10 dated 17.04.2014 issued under the signature of the respondent no. 4, so far as it relates to Roll Nos. Chapai Nababganj/342, Naogaon/222, Dinajpur/235, Tangail/373, Barisal/250, Dhaka/195, Comilla/41, Jhenaidah/140, Rajshahi/85, Dinajpur/339, Tangail/322, Pirojpur/177, Brahmanbaria/219, Pirojpur/49, Dinajpur/195, Chandpur/235, Comilla/64, Jessore/339, Bogra/86, Gopalganj/103, Joypurhat/121 and Sylhet/105 which were included in the subsequent list dated 17.04.2014 without having any basis at all, should not be declared to be without lawful authority and of no legal effect 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 petitioners are the permanent citizens of Bangladesh. Anyway, the Bangladesh Railway Authority issued a recruitment circular bearing Memo No. Ba:/Re:/Paschim-3/2010 dated 21.10.2010 and the same was published in various national daily newspapers for the purpose of recruiting Members of Lower Subordinate Service (MLSS) against 78 vacant posts. In conformity with the said advertisement, the Railway Authority invited applications from

interested candidates. In response to the above advertisement, the petitioners and others made applications for appointment as MLSS against those 78 vacant posts. On scrutiny of the applications submitted by the petitioners, admit cards were issued in their favour and they were called upon for a viva voce examination. After completion of the viva voce examination, the petitioners were finally selected for appointment as MLSS and accordingly, a panel was drawn up therefor and their roll numbers, amongst others, were included therein. Thereafter the Selection Committee submitted the result sheets before the concerned Railway Authority for final approval for appointment as MLSS against those 78 vacant posts. Although the petitioners were finally selected by the authority for appointment to the posts of MLSS, yet they did not get appointment letters. But curiously enough, the original result sheets of the viva voce examination were doctored and the names of some 22 unsuccessful candidates were included in the doctored result sheets by way of manipulation and the names of the petitioners were deleted/omitted from the final list in consequence. Subsequently on search, the petitioners obtained the manipulated result sheets published under the Memo No. AST/601/Niog/10(W)/10 dated 17.04.2014 issued under the signature of the respondent no. 4. To their utter surprise, the petitioners found that the doctored result sheets dated 17.04.2014 did not contain their names. They further came to know that the Selection Committee, out of oblique and mala fide intention, had included 22 unsuccessful candidates in the subsequent doctored result sheets to their prejudice. In this regard, "The Daily Samokal" and "The Daily Star" both dated 20.04.2014 published news items about the unscrupulous acts of the respondents and the way the original result sheets

were manipulated with a view to accommodating those unsuccessful 22 candidates in the subsequent panel without any legal basis. The action of the respondents in omitting/deleting the names of the petitioners from the original panel dated 08.01.2014 is unlawful, irrational, unreasonable and mala fide. Hence the Rule.

The respondent nos. 3-10 have contested the Rule by filing a joint Affidavit-in-Opposition. Their case, as set out therein, in short, runs as follows:

The alleged result sheets dated 08.01.2014 were never accepted by the higher Railway Authority. That being so, the concerned Railway Authority subsequently published a panel dated 17.04.2014 on the basis of the results of the viva voce examination of the candidates conducted by the authority. The respondent no. 4 did not commit any illegality or irregularity in the matter of publication of the result sheets on 17.04.2014. As the previous result sheets dated 08.01.2014 were not accepted by the higher authority, the question of their cancellation does not arise at all. So the Rule is liable to be discharged with costs.

At the outset, Mr. Md. Saidul Alam Khan, learned Advocate appearing on behalf of the petitioners, submits that the petitioners along with others were finally selected by the appropriate authority for appointment to the posts of MLSS and the result sheets were duly published on 08.01.2014; but subsequently the result sheets dated 08.01.2014 were doctored and manipulated in consequence of which the names of the petitioners were omitted/deleted from the subsequent list dated 17.04.2014 and the new

doctored and manipulated list of successful candidates was published by the authority on 17.04.2014 without any legal basis whatsoever.

Mr. Md. Saidul Alam Khan further submits that it does not stand to reason and logic as to why the names of the petitioners were omitted/deleted from the subsequent list dated 17.04.2014 and in the facts and circumstances of the case, it appears that their names were omitted/deleted therefrom in a very opaque, non-transparent and unfair manner.

Mr. Md. Saidul Alam Khan also submits that the result sheets dated 08.01.2014 positively show that the petitioners were finally selected by the authority for appointment to the posts of MLSS as evidenced by Annexure- 'B' series to the Writ Petition; but at a subsequent stage, the names of the petitioners were dropped and the earlier panel dated 08.01.2014 was supplanted by the doctored panel dated 17.04.2014 and as such the doctored panel dated 17.04.2014 has no legs to stand upon and given this scenario, the petitioners are entitled to be appointed to the posts of MLSS on the basis of the result sheets published on 08.01.2014.

Mr. Md. Saidul Alam Khan next submits that the Railway Authority without any apparent cause violated the equality clause of Article 27 of the Constitution in the matter of appointment of the petitioners to the posts of MLSS and what is worthy of notice is that excepting the petitioners and some other successful candidates, the earlier panel dated 08.01.2014 was maintained to a great extent in the doctored panel published on 17.04.2014 and the petitioners are quite in the dark about the reason for their non-appointment to the posts of MLSS and under compelling circumstances, they

invoked the writ jurisdiction of the High Court Division under Article 102 of the Constitution.

Mr. Md. Saidul Alam Khan further submits that in view of the doctrine of legitimate expectation, the petitioners are legally entitled to be appointed as MLSS on the basis of the result sheets dated 08.01.2014.

Mr. Md. Saidul Alam Khan also submits that the exclusion of the names of the petitioners from the final panel dated 08.01.2014 is illegal, irrational, unreasonable and mala fide on the face of it and that being so, the petitioners pray for a direction from this Court for their appointment as MLSS on the basis of the result sheets published on 08.01.2014.

In support of the above submissions, Mr. Md. Saidul Alam Khan relies upon the decisions in the cases of Bangladesh Biman Corporation represented by the Managing Director, Biman Head Office, Balaka Bhaban, Kurmitola, Dhaka...Vs...Rabia Bashri Irene and others, 8 MLR (AD) 223; Bangladesh Soya-Protein Project Ltd....Vs...Secretary, Ministry of Disaster Management and Relief, Bangladesh Secretariat, Dhaka, 22 BLD (HCD) 378; Sylhet Janakallayan Bahumukhi Khudra Baboshayee Samabaya Samity Limited...Vs...Sylhet City Corporation and others, 8 SCOB [2016] (HCD) 23 and Dr. Abeda Begum and others...Vs...Public Service Commission and others, 59 DLR (HCD) 182.

Per contra, Mr. Shaheed Alam, learned Advocate appearing on behalf of the respondent nos. 3-10, submits that the appropriate authority of Bangladesh Railway did not accept the result sheets dated 08.01.2014 because of some “ত্রুটি-বিচ্যুতি” (defects) therein and for that reason, the new result sheets on the basis of a fresh panel were published on 17.04.2014 and as the names

of the petitioners were not included in the subsequent result sheets published on 17.04.2014, they were not appointed as MLSS.

In order to buttress up this submission, Mr. Shaheed Alam adverts to an unreported decision in the case of the Chief Personnel Officer (West), Bangladesh Railway and others...Vs...Muhammad Shamsur Rahman and others rendered in Civil Petition For Leave To Appeal Nos. 90-93 of 2010.

We have heard the submissions of the learned Advocate Mr. Md. Saidul Alam Khan and the counter-submission of the learned Advocate Mr. Shaheed Alam and perused the Writ Petition, Affidavit-in-Opposition and relevant Annexures annexed thereto.

Admittedly the petitioners along with others made applications for appointment to the 78 vacant posts of MLSS in Bangladesh Railway pursuant to the advertisement made in different national newspapers on 21.10.2010. It is further admitted that after successfully qualifying in the viva voce examination, the petitioners, amongst others, came off with flying colours and accordingly they were empanelled on 08.01.2014. In this regard, the result sheets were also published on the self-same date (08.01.2014).

However, we have gone through the original relevant record of Bangladesh Railway. In course of perusal of the original record of Bangladesh Railway, it seems that after approval of the previous panel dated 08.01.2014 by the appropriate authority, some alleged “ত্রুটি-বিচ্যুতি” (defects) were detected and thereafter the new result sheets were published on the basis of the new panel on 17.04.2014 leaving out the names of the petitioners in the process. In other words, the names of the petitioners were not included in the subsequent panel and the result sheets published on 17.04.2014. It is curious

to note that the nature of “কিছু ত্রুটি-বিচ্যুতি” (some defects) has not been explained or spelt out in the original record of Bangladesh Railway. This is simply incomprehensible, mysterious and cryptic. What is of paramount importance is that the contesting respondents have singularly failed to attribute any liability to the petitioners on the question of omission or exclusion of their names from the subsequently published results dated 17.04.2014. So because of the omnibus nature of “কিছু ত্রুটি-বিচ্যুতি” in the result sheets published on 08.01.2014, the petitioners can not be victimized. Anyway, it transpires that by reason of those “ত্রুটি-বিচ্যুতি”, the earlier published results dated 08.01.2014 were changed and the new panel was prepared on the basis of which subsequently the new results were published on 17.04.2014. The Annexures- ‘D’ series to the Writ Petition having remained unassailed or uncontroverted undoubtedly lend support to the doctoring and manipulation of the result sheets published on 17.04.2014. On perusal of the original record of Bangladesh Railway, it does not seem to us that the earlier panel dated 08.01.2014 did not reach its finality. What is stunning and astounding is that without cancelling the published results dated 08.01.2014, the Railway Authority made a new panel and published results on the basis thereof on 17.04.2014 without any legal foundation. On this point, Mr. Shaheed Alam has failed to offer any convincing submission before this Court.

Be that as it may, let us now address the unreported decision passed by the Appellate Division in Civil Petition For Leave To Appeal Nos. 90-93 of 2010. The relevant portion of that decision of the Appellate Division is as under:

“On consideration of the facts and circumstances of the case, it appears that the writ-petitioners had no cause of action to move the application in the writ jurisdiction inasmuch as the writ-petitioners did not acquire any legal right for appointment as such, inasmuch as admittedly their matter did not reach finality and there is no formal refusal by the authority.”

Reverting to the case in hand, we have already observed that the appointment process reached its finality and thereafter the results were published by the Railway Authority on 08.01.2014. As the subsequently published results dated 17.04.2014 did not contain the names of the petitioners, their appointments to the posts of MLSS were deemed to have been refused, albeit there was refusal to that effect in black and white by the Railway Authority. Strangely enough, regard being had to the facts and circumstances of the case, it is ex-facie clear that the petitioners did not have a square deal before the Railway Authority.

Mr. Md. Saidul Alam Khan has invoked the doctrine of legitimate expectation in this case. In the decision in the case of Union of India and others...Vs...Hindustan Development Corporation and others reported in AIR 1994 SC 988, it has been spelt out that the protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision, in that

event, the decision-maker should justify the denial of such expectation by showing some overriding public interest.

In the decision in the case of Food Corporation of India...Vs...M/S. Kamdhenu Cattle Feed Industries reported in AIR 1993 SC 1601, the Court recognized the legitimate expectation of the highest bidder; but refused relief because of the overriding public interest in getting further higher price obtained through subsequent negotiations with all the bidders.

In the decision in the case of Sirajul Islam (Md) and others...Vs...Bangladesh and others reported in 60 DLR (HCD) 79, it has been held that the mere reasonable or “legitimate expectation” of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a “legitimate expectation” forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every “legitimate expectation” is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case.

In the decision in the case of the Chairman, Bangladesh Textile Mills Corporation...Vs...Nasir Ahmed Chowdhury and others reported in 22 BLD (AD) 199, it has been held that an expectation could be based on an express promise or representation or by an established past action of settled conduct and the representation must be clear and unambiguous. It could be a representation to an individual or generally to a class of persons. It has been further held in that decision that every such legitimate expectation does not by

itself fructify into a right and therefore it does not amount to a right in the conventional sense.

The principles as to invocation of the doctrine of legitimate expectation have been spelt out in the case of *Sylhet Janakallayan Bahumukhi Khudra Baboshayee Samabaya Samity Limited...Vs...Sylhet City Corporation and others* reported in 8 SCOB [2016] (HCD) 23 relied on by Mr. Md. Saidul Alam Khan.

The doctrine of legitimate expectation, as we see it, is predicated upon the following:

- (a) The statement or practice giving rise to the legitimate expectation must be sufficiently clear and unambiguous, and expressed or carried out in such a way as to show that it was intended to be binding;
- (b) The statement or practice must be shown to be applicable and relevant to the case in hand;
- (c) Legitimate expectation is enforced in order to achieve fairness;
- (d) If the statement said to be binding was given in response to any information from the citizen, it will not be binding if that information is less than frank, and if it is not indicated that a binding statement is being sought;
- (e) He who seeks to enforce must be a person to whom (or a member of the class to which) the statement was made or the practice applied; and

(f) Even though a case is made out, the legitimate expectation shall not be enforced if there is overriding public interest which requires otherwise.

From the above, it is crystal clear that the doctrine of legitimate expectation is enforced in order to achieve fairness and to eschew arbitrariness, unreasonableness, irrationality and bad faith. From the practice and procedure adopted by the Bangladesh Railway Authority and in view of the petitioners being successful in the viva voce examination conducted by the Selection Committee and having regard to their names being finally published as successful candidates on 08.01.2014, they had the legitimate expectation that they could be appointed to the vacant posts of MLSS in Bangladesh Railway; but their legitimate expectation was arbitrarily, unreasonably and irrationally negated and defeated by the subsequently published doctored and manipulated results on 17.04.2014.

Of course, even if a case of legitimate expectation is made out by the petitioners, it may not be enforced if there is overriding public interest which requires otherwise. But in the instant case, no overriding public interest has been pleaded by the respondents nor any contingency of a compelling nature has occurred. In this perspective, the Bangladesh Railway authority can not defeat the legitimate expectation of the petitioners in the matter of their appointments to the vacant posts of MLSS.

In the case of Bangladesh Biman Corporation represented by the Managing Director, Biman Head Office, Balaka Bhaban, Kurmitola, Dhaka...Vs...Rabia Bashri Irene and others reported in 8 MLR (AD) 223, the act of meting out discriminatory treatment to the respondents has been found

to be violative of the equality clause as contained in Article 27 of the Constitution. Coming back to the present case, although other successful candidates standing on the same footing with the petitioners being empanelled on 08.01.2014 were appointed to the posts of MLSS; the petitioners were not so appointed due to some inexplicable reasons best known to the authority itself. The authority violated the equality clause as embodied in Article 27 of the Constitution by not appointing the petitioners to the vacant posts of MLSS.

In the case of Bangladesh Soya-Protein Project Ltd....Vs...Secretary, Ministry of Disaster Management and Relief, Bangladesh Secretariat, Dhaka reported in 22 BLD (HCD) 378, all the dimensions of the doctrine of legitimate expectation have been discussed in detail and the legitimate expectation of the petitioners in the present case before us can not be set at naught in view of the facts and circumstances of the case.

In the case of Dr. Abeda Begum and others...Vs...Public Service Commission and others reported in 59 DLR (HCD) 182, arbitrary exclusion of the petitioners without giving them any opportunity of being heard has been found to be violative of the principle of natural justice.

In the case in hand, the exclusion of the names of the petitioners from the subsequently published result sheets dated 17.04.2014 being actuated by bad faith (*mala fides*) can not be countenanced on any plea whatsoever. Mr. Shaheed Alam has signally failed to come up as to why the names of the petitioners were ultimately omitted/deleted/excluded from the subsequently published results dated 17.04.2014. In this connection, it will not be out of place to mention that the administrative actions of the public functionaries

must be fair, reasonable, rational and free from any malice whatsoever. What we are driving at boils down to this: the petitioners were not appointed to the vacant posts of MLSS of Bangladesh Railway through no fault of their own. Against this backdrop, according to us, the petitioners are entitled to be appointed against the reserved vacant posts of MLSS of Bangladesh Railway.

Although the record shows that the names of 22 new candidates appeared in the subsequently published results dated 17.04.2014, yet it is not clear therefrom whether they played any nefarious role or resorted to any malpractice in getting their names published in the result sheets dated 17.04.2014. Indisputably those 22 persons have not been brought on record in order to defend themselves in this case. It is a settled proposition of law that no party shall be allowed to enjoy the benefit of his own fraud. But since no conclusive proof of perpetration of any fraud is available on record by those 22 persons, we do not think it fit and proper, in the facts and circumstances of the case, to interfere with their continuing with the jobs at this stage.

In view of the foregoing discussions and regard being had to the facts and circumstances of the case, we think, the ends of justice will be sufficiently met if we make a direction to the authority to appoint the petitioners against the reserved vacant posts of MLSS in no time. In the result, the Rule succeeds in part.

Accordingly, the Rule is made absolute in part without any order as to costs. The respondents are hereby directed to issue appointment letters in favour of the petitioners against the reserved vacant posts of MLSS within 60(sixty) days from the date of receipt of a copy of this judgment.

Let a copy of this judgment be immediately transmitted to each of the respondents for information and necessary action.

J. B. M. HASSAN, J:

I agree.