

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

WRIT PETITION NO. 3171 OF 2015.

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Birampur Sonali Matshajibi Samabay Samity
Ltd.

.....Petitioner.

-Versus-

Government of Bangladesh and others.

í í í Respondents.

Mr. Dr. A.K. M Ali Advocate with

Mr. A.B Showket Ali, Adv.

... For the petitioner.

Mr. Ashif Hasan, Adv.

í For respondent No.6

Mr. Md. Shahidul Islam, DAG

í For respondent No.2

Heard On: 23.03.2016, 24.03.2016.

Judgment on: 31.03.2016.

Present:

Mr. Justice M. Moazzam Husain

And

Mr. Justice Md. Badruzzaman

Md. Badruzzaman, J:

This rule *nisi* was issued calling upon the respondents to show cause as to why the Memo bearing No. 05.60.9000.008.29.001.15-907 dated 16.03.2015 issued under the signature of respondent No.2 recommending lease of Boro Kanglar Hawor Group Jalmahal in favour of respondent No.6 under development scheme (Annexure-C) shall not be declared to have been made without lawful authority and is of no legal

effect and as to why a direction should not be given to the respondents to grant lease of the said Jalmahal to the petitioner under development scheme for 6 (six) years on his application for lease (Annexure-A).

Facts, relevant for disposal of this rule, in brief, are that the petitioner on 16.11.2014 applied for a long term lease of the Fishery namely 'Boro Kanglar Hawor Group Jalmahal' under development scheme before the Ministry of Land for a period of six years with effect from 1422 B.S. with an offer of 62% enhanced rate over the lease money of the previous year, while the respondent No. 6 and two other samity applied for lease for the same period under the same scheme in which respondent No. 6 quoted 35% enhanced rate. The Ministry of Land rejected the application of respondent No. 6 for non-filing of undertaking along with the application and after considering the applications of the petitioner and two other samitys the Ministry called for a report and recommendation from the Deputy Commissioner, Sunamgonj by letter dated 21.12.2014. Upon receipt of the letter from the Ministry, the Deputy Commissioner held inquiry through the Upazilla Jalmahal Management Committee (in short 'Upazilla Committee') who made recommendation in favour of respondent No. 6 on the basis of D.O letters issued by two Parliament members, whereas the original application of respondent No. 6 was rejected by the Ministry. The Upazilla Committee forwarded the report to the Deputy Commissioner. The report was placed before the District Jalmahal Management Committee (in short 'District Committee') who made recommendation in favour of respondent No. 6 on a consideration that subsequently respondent No. 6 changed its offer to 65%

from 35% before the Deputy Commissioner and that two D.O letters have been issued by members of Parliament recommending to grant lease in favour of respondent No. 6. The said decision was forwarded by the Deputy Commissioner by his office Memo dated 16.03.2015 to the Ministry of Land with recommendation to grant lease in favour of respondent No. 6. In the above factual background the petitioner obtained the instant rule challenging the decision of the District Fishery Management Committee.

Respondent No.6 contested the rule and filed affidavit-in-opposition stating, inter alia, that respondent No.6 made highest offer. As per Government Jalmahal Management Rules, 2009 (in short 'Rules 2009') all the pre-conditions were fulfilled by respondent No. 6 and accordingly the District Committee made recommendation for granting lease in its favour and in doing so the District Committee committed no illegality. It is also stated that another Matsajibi Samity namely Chomed Nagar Matsajibi Samabay Samity Ltd. filed Writ Petition No. 4140 of 2015 before this Court over the self same matter and obtained rule and order of stay. This respondent no. 6 filed Civil Petition for Leave to Appeal No. 1515 of 2015 before the Appellate Division against the order of stay passed by the High Court Division, which was stayed by the Appellate Division by order dated 10.06.2015. Subsequently the civil petition for leave to appeal was disposed of by order dated 09.07.2015 with a direction that the order of stay granted by the Honøble Judge-in-Chamber would continue till disposal of the rule. Writ Petition No. 4140 of 2015 was, thereafter, fixed for hearing before a Division Bench of this

Court and the rule was discharged for non-prosecution by order dated 03.02.2016.

After passing the order of stay by the Appellate Division the Government decided to lease out the Fishery for a period of 6 years with effect from 1422 B.S to respondent No. 6 which was communicated by Memo dated 25.06.2015; lease deed has been executed in favour of respondent No.6 on 30.06.2015 by accepting lease money and possession of the Fishery was handed over to respondent 6 on the same day. After getting possession, respondent No.6 has been enjoying the Fishery by investing huge amount of money and accordingly acquired a vested right over the Fishery which should not taken away at this stage.

Respondent No.2, the Deputy Commissioner, Sunamgonj contested the rule and filed affidavit-in-opposition denying the material facts as alleged by the petitioner and supported the case made out by respondent No.6 and contended that the respondents committed no illegality in recommending or granting lease in favour of respondent No.6.

Mr. A.K.M. Ali learned Advocate appearing with Mr. A.B Showket Ali learned Advocate for the petitioner submits that the petitioner made highest offer among the contesting candidates at the time of filing application and fulfilled all criteria for getting lease as per provision of rule 7 of Nitimala, 2009. It also made 20% security deposit by way of Pay Order to the concerned authority. As per provision of rule 7(4) of the Nitimala read with Circulars dated 18.11.2010 and 1.11.2012 there is no scope to amend/ enhance the offer once filed with application and to accept the same by the Deputy Commissioner. But the respondent No.6 in

violation of the above provisions of law made its otherwise lower bid higher by subsequent amendment. The District Committee also in violation of the said provisions and by taking into consideration of the so called D.O letters, which have got no legal force, most illegally and arbitrarily recommended for granting lease in favour of respondent No.6 and in doing so accepted its offer made subsequent to the original application before the Deputy Commissioner.

Learned Advocate goes further to argue that during pendency of this rule the Ministry of Land by taking into consideration of the recommendation and ignoring the relevant law involved in this matter arbitrarily approved lease in favour of respondent No.6. Accordingly, the impugned recommendation as well as its approval by the Ministry are liable to be struck down. Mr. Ali finally submits that as Upazilla Committee found that the petitioner fulfilled all criteria for getting lease and it made highest bid, a direction should be given upon the respondents to grant lease of the Fishery in favour of the petitioner by taking back its possession from respondent No.6.

Mr. Ashif Hasan, learned Advocate appearing for respondent No.6, on the other hand, raised question of maintainability of writ petition on prematurity ground by saying that this writ petition has filed challenging the recommendation which is not final order. He relied upon the case of Kamaluddin (Md) and another vs. Secretary, Ministry of Land and ors. reported in 56 DLR (AD) 212, Dhaka New Market vs. Dhaka City Corporation reported in 65 DLR 221 and a number of decisions of Indian jurisdiction to substantiate his contention that unless final order is passed

in a matter, person interested in the matter is not entitled to invoke writ jurisdiction. Learned Advocate further submits that the Nitimala also provides forum of appeal against any decision of the District Committee before the Divisional Commissioner but the petitioner without exhausting that forum invoked writ jurisdiction and on this ground also this writ petition is not maintainable. Mr. Ashif Hasan submits, as per provision of rule 7(5) of Nitimala, 2009 the Ministry of Land is the authority to take any decision in granting lease for public interest and in doing so it is not bound by the recommendation of District Committee. Learned Advocate further submits that Nitimala, 2009 prescribes no bar to amend/change any offer made within time prescribed for filing application. Learned Advocate also submits that since respondent No.6 made highest offer the District Committee as well as the Ministry committed no wrong by accepting it rather accepted the same for public interest. He lastly submits that pursuant to the impugned order, the respondent No.6 has deposited lease money, the government executed lease deed and handed over possession of the Fishery in favour of respondent No.6 and respondent No.6 having invested a huge amount of money in the Fishery acquired a vested right in the lease-hold property which can not be taken away at this stage.

Mr. Md. Shahidul Islam learned Deputy Attorney General appearing for respondent No.2 though supports the submissions made by the learned Advocate for respondent No.6 but could not make any plausible argument effectively assailing the submissions made by the learned Advocate for the petitioner.

We have considered the submissions made by the learned Advocates and perused the records.

It appears that the petitioner, respondent No.6 and two other samity's made applications before the Ministry of Land praying for lease of the Fishery in question under development scheme for a period of 6 years in which petitioner offered 62% enhanced rate over the lease money of preceding year whereas respondent No.6 offered 35%. The application of respondent No.6 was rejected by the Ministry due to non-filing of undertaking along with the application. Said decision was communicated by letter dated 21.12.2014 (Annexure-A(2)) with a direction to the Deputy Commissioner to return the pay order to respondent No. 6. On the other hand, the Ministry asked for recommendation from the Deputy Commissioner on the applications of the petitioner and other two samity's by another letter dated 21.12. 2014 (Annexure A(1)). It also appears that respondent No.6 without challenging the order of the Ministry approached the Deputy Commissioner to accept its application who instead of returning back the security deposit to respondent No.6 accepted its application and forwarded the same along with the applications of the petitioner and other samity's on 2.3.2015 to the Upazilla Nirbahi Officer asking for a report from Upazilla Committee. Upon inquiry, Upazilla Committee found that the petitioner quoted highest offer and fulfilled other criteria for granting lease but the Committee without recommending for granting lease in its favour recommended for granting lease in favour of respondent No. 6 as two members of parliament by D.O letters recommended for granting lease in its favour. The report was

consideration of the recommendations made in the D.O letters issued by two members of Parliament the District Committee recommended for granting lease in favour of respondent No.6.

Now question arises as to whether there was any scope under the Nitimala, 2009 to consider any application by the Deputy Commissioner once rejected by the Ministry or to bring about any amendment in the quotation/ offer any time subsequent to filing of application or the D.O letters have any legal force or overriding effect over the Nitimala and laws in respect of granting lease.

Lease granting process of all kinds of Government Jalmahals and their management has been prescribed in the Nitimala, 2009, which conferred power to grant lease of Government Jalmahal upon three kinds of Committees i.e District Jalmahal Management Committee, Upazilla Jalmahal Management Committee and Committee of the Ministry of Land called National Lease Management Committee. Procedure, management and power of District Committee in granting lease of closed Jalmahal with an area of above 20(twenty) acres are enunciated in rule 5 of Nitimala, 2009. Power to grant long term lease under Development Scheme of any closed Jalmahal covering an area of above 20 (twenty) acres, procedure of filing application, its requirement and quotation process have been enshrined in rule 7 of the Nitimala, 2009. Relevant provisions of rule 7 are quoted verbatim below for further appreciation:

৭. উন্নয়ন প্রকল্পের আওতায় ২০ একরর উর্দ্ধ বদ্ধ জলমহাল ব্যবস্থাপনা :-
 (১) মৎস্য সম্পদ উন্নয়ন, প্রকৃত মৎস্যজীবী-দের দারিদ্র বি-মাচন ও আর্থ সামাজিক উন্নয়-নর লক্ষ্য উন্নয়ন প্রকল্পের আওতায় ২০ একরর উর্দ্ধ সীমিত সংখ্যক বদ্ধ জলমহাল ৬ (ছয়) বছ-রর Rb" fig g%
 অনু-মাদন সা-প-ক্ষ নিবন্ধিত ও প্রকৃত মৎস্যজীবী সমবায় সমিতি-ক ইজারা

দেয়া যা-ব। আগ্রহী সমিতির আ-বদনপ-ত্রের সা-থ নিম্নবর্ণিত কাগজপত্র সংযুক্ত কর-ত হ-ব :-

- (ক) উন্নয়ন প্রক-ল্পের বিস্তারিত বিবরণ (প্রকল্প ছ-ক);
 (খ) প্রকৃত মৎস্যজীবী সমবায় সমিতির রেজি-ষ্ট্রেশ-নের সত্যায়িত কপি;
 (গ) নিবন্ধিত প্রকৃত মৎস্যজীবী সমবায় সমিতির সকল সদ-স্যের নাম, ঠিকানা ও ছবি;
 (ঘ) আ-বদনকারী সমিতির প্র-ত্যক সদস্য প্রকৃত মৎস্যজীবী এই ম-র্ম উপ-জলা জলমহাল ব্যবস্থা-পনা কমিটির পক্ষ থে-ক প্রত্যয়ন পত্র;
 (ঙ) প্রকৃত মৎস্যজীবী মাছ চাষ, শিকার ও বিপন-নের সা-থ জড়িত আ-ছন ও থাক-বন এবং জলমহাল ইজারা পে-ল, নি-জরাই তা পরিচালনা কর-বন এমন অংগীকারনামা;
 (চ) সভাপতি, সম্পাদক ও উক্ত সমিতির নিকট সরকারী কোন ব-কয়া রাজস্ব পাওনা আ-ছ কিনা এবং তা-দর weix কোন সার্টিফি-কট মামলা আ-ছ কিনা জেলা প্রশাসন কর্তৃক প্রত্যয়ন পত্র।

(২) 0Dbqb cKxi0 Avl Zvq vwb Rj gnvj BRviv cvl qvi Rb" vwb grm"Rix mgevq mvgwZ fwg g%ixi wbañi Z mgqmvgvi wfZi Avx`b Ki x Zrxñ]x msukw0 vj v ckmK Gi wbKU cñZx`b Pvlqv nxx| vj v ckmK, vj v Rj gnvj e`e`ebv KvgwU/ DcRj v Rj gnvj e`e`ebv KvgwU mrvqZvq Dvj wLZ 7(1) mvgxi Z`vej xmn D³ mvgwZi vñi`Zv I Kvhfeg hvPvB evQvB Kx gZvgZmn GKwU mybw 0 cñZx`b `β gvxi gx" fwg g%ixi vñY Ki xb|

(৩) *****

(৪) আ-বদনকারী সমিতিসমূহ তা-দর আ-বদ-নের সা-থ সংশ্লিষ্ট জেলা প্রশাসক বরাবর তা-দর প্রদত্ত ইজারা মূ-ল্যের ২০% জামানতস্বরূপ ব্যাংক ড্রাফট, পে-অর্ডার এবং দুই বছ-রের অডিট রি-পোর্ট (প্র-যাজ্য ক্ষে-ত্র) সংযুক্ত ক-র দি-বন। উক্ত জামান-তের টাকা ইজারা প্রাপ্ত সমিতির শেষ বছ-রের ইজারামূ-ল্যের সা-থ সমন্বয় করা হ-ব। (underlined by us)

(৫) vj v Rj gnvj e`e`ebv KvgwU hv` vwb cKv grm"Rix mgevq mvgwZi AbKx vwb Rj gnvj 0Dbqb cKxi0 Avl Zvq BRviv cñvxi Rb" GB bxwZx Dvj wLZ 7(1), 7(2), 7(3), I 7(4) mvgxi AvxvK RvgvbZ I mpcwilkmn cñZx`b g%ixi vñY Kxb vñi`Z fwg g%ixi q 4(Pvi) gvxi gx" imxv%ebñY Kx msukw0 vj v ckmKx AewZ Kixb Ges G mgxi Rb" D³ Rj gnvj wU BRviv Kvhfeg `ñZ `vKx | g%ixi GRb" GKwU KvgwU `vKx Ges Avx`b MñY ev ewZj ev BRviv cñ vb mspv%ebñ KvgwU vñvñ imxv%ebñ%ebñ wexiPZ nxx |

(৬) Dbqb cKxi Avl Zvq vwb Rj gnvj BRvivi vñx ceñZñ e0xi BRviv gj" ev weMZ 3 e0xi BRviv gx"i gx" xwU vñ nq Zvi gx"i Dci Kgcñ 25% ewñ nvx BRviv gx" wbañi Y Ki x nxx Ges 1g e0xi wbañi Z BRviv gj" B cieZñ 2q, 3q I 4_°eQi Av`vq Ki x nxx| 5g I 6ô e0x G BRviv gj" Avxi 25% ewñ cix Ges vñAbñvqx Zv Av`vq nxx|

The language of the above provisions of rule 7 of the Nitimala, 2009 is plain and unambiguous. Clause 1 of rule 7 clearly speaks about the documents to be filed along with the application for long term lease under development scheme. While clause 4 prescribes a pre-condition to attach with application -Bank Draft / Pay Orderø for an amount of Tk. 20% of the quoted lease money, made as per provision of clause 6, for lease under development scheme. The expression -আ-বদ-নর সা-থ সংশ্লিষ্ট জেলা প্রশাসক বরাবর তা-দর প্রদত্ত ইজারা মূ-ল্যের ২০% জামানতস্বরূপ ব্যাংক ড্রাফট, পে-অর্ডার ***** সংযুক্ত ক-র দি-বনø used in clause 4 provides pre-condition to attach -Bank Draft / Pay Orderø with the application which means the -Bank Draft / Pay Orderø are part of the application. It follows, therefore, that an application means an application attached with Bank Draft/ Pay Order and other documents as required under rule 7. Or in other words, to qualify as an application under the Nitimala 2009 an application must be accompanied by Bank Draft/ Pay Order and other documents specified in rule 7, any short of it will disqualify an application leaving no scope for curing the defect at any subsequent stage. To say otherwise would be to encourage unhealthy competition among the contending parties resulting in loss of fair play in the bidding process which is not the contemplation of law.

To give effect to the provision of Rules 7(1) and 7(4) of the Nitimala, the Ministry of Land issued Circular on 22.8.2010 (published in Bangladesh Gazette dated 18.11.2010) providing not to accept any application for long term lease under development scheme, filed without original -Pay Order /Bank Draftø

The Ministry of Land issued another Circular on 31.10.2012 (published in Bangladesh Gazette dated 01.11.2012) expressing strict view against acceptance of additional Bank Draft/ Pay Order by the Deputy Commissioner (s) with a view to giving a Samity an opportunity to be the highest bidder. For better appreciation the Circular dated 1.11.2012 is quoted verbatim below:

MYcRvZ%ovsj vxxk mi Kvi
fmg g%uq
mvqivZ - 1 kvLv
cwi cÎ

Zwii L, 16, KwizR 1419 e/vã/ 31 Axvei 2012 wLã÷vã

welq t Dbqeb cKx পর Avl Zvq Rj gnvj BRviv cûmBi Rb" wjv cKvmKxi wBKU
`wLj KÛ AwZwi ³ e`vsK WcdU ewiZj KiY I mjbw` 0 mpcwii k wY cûmK |

bs 31.00.0000.050.68.020.09 (Ask - 1) - 833 - mi Kwii Rj gnvj e`e`Ébv
bxiZ, 2009 Gi Abj 7 Abjv 20 GKxi DaÉvqZbueikó Rj gnvj `xN
wv` (6) eQi BRviv jvxi Rb" D³ bxiZ wvavfi Z mgxi gx` wbeÜZ I cKÛ
grm`Rrex mgevq migwZ KZÛ fmg g%uq Avx`b Kivi weavb ixx|
Avx`bKvix migwZ Dwj wLZ bxiZi Abj 7(1) G ewY KvMRcÎ Ges Abj 7(4)
Abjv Dnvi D×Û BRvivgxi 20% A`RvqvbZ`t wjv cKvmKxi
AbK e`vsK WcdU/ wAWP Avx`xi mvx Rgv w` x nq|

2| Dcwi D³ Avx`b cûmBi ci fmg g%uq nX msukó wjv cKvmKxi wBKU
cûZx`b Pvl qv nq | mi Kwii Rj gnvj e`e`Ébv bxiZ 2009 Abjv wjv cKvmK
wjv Rj gnvj e`e`Ébv KigwU / DcRjv Rj gnvj e`e`Ébv KigwU mrvqZvq
msukó Avx`bKvix migwZi `wLj KÛ KvMRcÎ/ Z_`vej x hvPvB evQvB Kx mjbw` 0
mpcwii kmn g%uq cûZx`b wY Ki xb|

3| wK%uq Kiv hvj wv g%uq nX wjv cKvmKxi wBKU cûZx`b Pvl qvi
ci wv wv wjv cKvmK mi Kwii Rj gnvj e`e`Ébv mspv%uZi e`Z`q NuUx
Avx`bKvix cûZx`Mx grm`Rrex mgevq migwZi /migwZmgxi wBKU nX AwZwi ³
e`vsK WcdU / wAWP MhY Kx wv weKl migwZ mxf `i`vZv nevi mpxM
Kx w` x Dnv BRviv cûvxi mpcwii k Ki xb| Gfvx e`vsK WcdU / wAWP
MhY wjv cKvmKxi GLwZqvi ewfZ Ges mi Kwii Rj gnvj e`e`Ébv bxiZ 2009
Gi cwi c%u Avevi GgbI j` Kiv wv wv wjv cKvmK wvbi t mjbw` 0
mpcwii k e`ZxZB ðm`q wvxi Rb`0 g%uq cûZx`b w` xxb Bnvl mi Kwii
Rj gnvj bxiZ, 2009 Gi e`Z`q|

- 4| GgZve`É, wvxi wLZ nxx x Ñ
- (1) wv grm`Rrex mgevq migwZ KZÛ fmg g%uq wvavfi Z mgxi gx`
`wLj KÛ Dbqeb cKxi cKÍ Qx Dwj wLZ BRvivgj`B msukó migwZi D×Û
BRvivgj` wmvx MY" nX |
 - (2) fmg g%uq nX wLZ Avx`bcxi mx` `wLj KÛ e`vsK WcdU/ wAWP
e`ZxZ wjv cKvmKMY wv Avx`bKvix grm`Rrex mgevq migwZi wBKU nX

AnZwi 3 e'vsK WtdU/ wAWw® RvgvZ inxxx MhY Ki xb bv | Gi e Wwb
 Avx` b I AnZwi 3 RvgvZ `vmlj Kiv nX Zv `qsmlqfvx evmZj MY" nX|
 (3) Xj v ckvMkMY msukó Rj gnvj WJ Dbqb cKxi BRviv c0vxi Rb"
 Wf³ KZvmn mybw` 0fvx mcwii k WY Ki xb |(underlined by me)
 xvt WJ XQj ingvb
 miPe|

The above Circular specifically states that the value mentioned in the development project submitted by a Samity shall be deemed to be the lease value of the Fishery and also prohibits the Deputy Commissioner(s) from accepting Bank Draft/Pay Order, not filed along with the application for lease.

In the case of Niamatpur Matsajibi Samabya Samity vs. Government of Bangladesh and others (Writ Petition No. 10603 of 2013) the point was raised and we (to which both of us were parties, judgment delivered on 1.6.2014) observed that "*viewed in this light, it is clear that in the bidding process initiated for lease of fisheries there is no scope for amendment / modification, alteration of or varying from the original bid quoted with the initial application or to file fresh application or submit fresh project subsequent to filing of the initial ones*". We see no reason to take departure from the view already taken by us.

Rebarring back to :-D.O Letterø It means :-***Demi-official letterø*** and is a form of communication used by a department. This form is generally used in correspondence between government officers for an interchange or communication of opinion or information without the formality of the prescribed procedure. It may also be used when it is desired that a matter should receive personal attention of the individual addressed. Communications to non-officials also can take the form of a *demi-official*

letter. It is written in the first person and in a personal and friendly tune. ***Demi-official letter*** or official correspondence/ communication, information, interchange has got no legal force nor have any binding effect or in other words, the recipient of a D.O letter is not legally bound to act in accordance with such letter. Where determination of rights, privilege etc. of person(s) are enshrined in law itself, the same cannot be curtailed or taken away by a mere request/recommendation of the member of Parliament or any other dignitary in the form of D.O letters or any other manner whatsoever.

It repeatedly comes to our notice, particularly in writ matters, that some members of Parliament have been directing/requesting/recommending the concerned government/autonomous bodies/official(s), in the form of D. O letters, to grant lease of government Fishery to a particular group; to appoint a particular person in the post of president/member of managing committee of recognized non-government/government schools/madrasahs, in the post of chairman/member of governing body of recognized non-government/government colleges; to approve/dissolve such managing committee/governing body by the Board/University; to remove such chairman/member/president from their respective posts; to dissolve/change member(s) of managing/ad-hoc committee of such schools/madrasahs; to dissolve/change member(s) of governing body of colleges/madrasahs etc. and so on at his/her sweet will. Such D.O letters are being issued, in most cases, in contravention of the expressed provisions of law. And the concerned officials of government or autonomous bodies by placing the D.O letters above the law are acting

in total disregard of the mandate of law without bothering about their responsibilities as a public servant. Such abuse of the official power by the public servants are giving rise to unending and avoidable litigations unnecessarily burdening the courts at the cost of public time and money.

Members of parliament, according to the Clause 50 of THIRD SCHEDULE of the Constitution, are oath bound not to allow their personal interest to influence the discharge of their duties as members of Parliament. They are not above the law and must act in accordance with law. They are people's representatives, which does not mean that by issuing D.O letters they can favour or dis-favour any particular people or group of people as and when they desire in disregard of law and the interest of the people in general.

On perusal of the Nitimala and other relevant laws relating to control and management of Government Fishery it appears that there is no scope for the lease granting authority to consider D.O Letter(s) or any kind of recommendation made by any person how high so ever other than the recommendation made by the committees prescribed on that behalf. What criteria should be followed in granting lease has been clearly enshrined in the Nitimala itself. Since the Nitimala and other relevant laws specifically fixed criteria regarding the eligibility of a fisherman samity in getting lease of Government Fishery there is no scope to consider D.O Letter(s) issued by MP(s), or any other person seeking to favour any particular samity to the deprivation of a samity which is more qualified to get the lease.

Admittedly respondent No.6 subsequently changed/amended the original quotation from 35% to 65% by filing application to the Deputy Commissioner with a view to be the highest bidder. As per clause 4(2) of Circular dated 1.11.2012 (as quoted above), any such application and additional security in the form of pay order or bank draft deemed to be void. The Deputy Commissioner has got no jurisdiction to accept such additional bid. More so, after rejection of the original application of respondent No.6 by the Ministry of Land it is unclear under what authority the subordinate administration, in this case the Deputy Commissioner, took into consideration of the same. From the decision taken by the Deputy Commissioner it appears that he acted in a manner as if he is the appellate authority of the Ministry of Land. Moreover the Deputy Commissioner violated the express provision of law in accepting the additional pay order of respondent No.6. This is a glaring example of abuse of office power which amounts to misfeasance on the part of the Deputy Commissioner making him liable to appropriate action under law. If such an arbitrary action on the part of the public functionary is allowed to be continued the rule of law as well as public confidence in the administration will dwindle down.

Given the chronological facts, one after another, it can easily be inferred that recommending to grant lease of the Fishery in favour of respondent No.6 made by the Upazilla Committee as well as the District Committee, comprised of Government officials, was concurrently outweighed by two successive D.O letters issued by the M.Ps.

The Ministry of Land through its Committee also without taking into consideration of the facts and legal aspect approved the impugned recommendation and thereby by accepting the changed quotation decided to grant lease in favour of respondent No.6 which has been communicated by letter dated 25.6.2015 (Annexure-II of affidavit-in-opposition). Such approval of the Ministry appears to be in direct contravention of the provisions of Nitimala, 2009 and Circulars issued by itself. Although the Ministry by issuing Circulars, one after another, has taken a strict view against acceptance of additional Bank Draft / Pay Order not filed along with the original application but it has accepted such Pay Order filed subsequent to the original application and granted lease order in favour of respondent No.6, amounts to violation of its own law.

It appears that this rule was issued on 06.04.2015. When the issue i.e whether the changed quotation made before the Deputy Commissioner was legal or not was pending before this Court the Ministry chose not to wait for the decision of this Court but they instead decided to grant lease in favour of respondent No.6 and also handed over the possession of the Fishery to it. This is an example of bureaucratic highhandedness which cannot but be strongly deprecated.

Respondent No.6 also instead of taking any steps for hearing of this rule pending before this Division and without waiting for its result at its own risk and peril got the lease deed from the Government by depositing one year lease money as well as took delivery of possession of the Fishery on the basis of an apparently illegal decision.

Now the other question i.e, whether respondent No. 6 accrued vested right in the Fishery. Since the decision of respondents in recommending or granting lease in favour of respondent No.6 were ex-facie illegal and without jurisdiction respondent No.6 has not accrued any vested right in the Fishery by reason merely of depositing lease money and/or enjoyment thereof.

Mr. Ashif Hasan learned Advocate for respondent No.6 raised the question of maintainability of the writ petition on the ground of availability of alternative forum and prematurity.

Rule of exhaustion is well settled. The departmental forum is quasi-judicial in nature and cannot said to be efficacious far less equal to judicial review. More so, where the decision taken by the public authority is apparently *mala fide*, obviously arbitrary and so desperately defiant of law affecting rights of citizens so as to attract the mischief of Article 31 of the Constitution, appropriate remedy may be sought in writ jurisdiction. Furthermore, Rule 7 of Nitimala 2009 does not provide any provision to the aggrieved party to file appeal to the Divisional Commissioner or before any other authority challenging such recommendation. So, the submissions of Mr. Ashif on rule of exhaustion has no leg to stand.

Mr. Ashif further contended that since the lease process was not completed when the Rule was taken the writ petition was premature. The point he wants to make out is that Ministry is the authority to give the final decision on the prayer for lease and unless the final decision is given by it mere recommendation by the District Committee cannot be challenged. True it is that the Ministry was still there to give its decision.

But the District Committee is an authority that takes its decision on facts and information collected by an enquiry committee and on the facts and information took its decision after threadbare discussion of the same and the District Committee being the instrumentality of the Ministry to act in aid of the Ministry in matters of spot verification and discern the real position on the ground the Ministry is left with no other fresh materials except the report submitted by the District Committee to base on, in taking its decision. Moreover, there is no scope for the affected party to make his representation before the Ministry at the time of making its decision on the recommendation of the District Committee. Seen in the light, the Upazila Committee, District Committee and the Ministry are part of the same decision making process and the Ministry merely tops the list in the hierarchy. Therefore, unlike an appellate forum the Ministry cannot be said a separate authority to collect facts by itself on which it may decide to grant lease. It depends upon the report of the District Committee to take its decision. In that sense question of prematurity as is canvassed in cases of statutory appeal or review is not applicable in cases involving leasing process under development scheme. If the report of the District Committee is found *ex-facie* arbitrary, *mala fide* and otherwise tainted with malice a person affected may well approach the High Court Division in order to prevent the injustice being perpetuated and all these criteria have been fulfilled in the instant case. In view of the peculiarity of facts the decisions sought to be relied upon by Mr. Ashif Hasan are not applicable in this case. We are, therefore, unable to accept the contention raised by Mr. Ashif Hasan learned Advocate on this point.

Since it is the settled principle that a wrong, if detected, should not be allowed to continue and must be cured as soon as detected so as to avoid perpetual damage we are of the considered view that for ends of justice, public interest and in order to avoid further prolongation of deprivation of the petitioner and to lessen the brunt of injustice the lease of the Fishery should be granted for the remaining period to the petitioner under development scheme at least for the remaining lease period.

Given the facts and circumstances of the case and the discussion made above we are led to hold that this rule merits consideration.

In the result, the rule is made absolute.

The impugned recommendation and subsequent approval of the Ministry of Land in respect of granting lease of the Fishery in question in favour of respondent No.6 are declared to have been passed and issued without any lawful authority and are of no legal effect.

Respondents No. 1-5 are directed to grant lease of the Fishery in question in favour of the petitioner under development scheme for the remaining lease period of 6 (six) years by accepting proportional lease money as per quotation made by it and deliver possession of the same in its favour by taking back possession of the Jalmahal in question from respondent No. 6 within 30 (thirty) days from the date of receipt of the copy this judgment.

The concerned Deputy Commissioner, Sunamgonj is directed to pay Tk. 5000/- (Taka five thousand) from his own purse to the petitioner as cost of and incidental to the writ petition within 30 (thirty) days from the date of receipt of the copy this judgment.

M. Moazzam Husain, J.

I agree.