

19 SCOB [2024] HCD 66

**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 609 of 2019

**Mr. Md. Taherul Islam (Tawhid)
... Petitioner**

Vs.

**The Speaker, Bangladesh Jatiya
Sangsad and others**

...Respondents

Mr. Mahbubey Alam, Attorney General
with Mr. Murad Reza, Additional Attorney
General with Mr. Motahar Hossain Saju,
D.A.G. with Mr. Mokleshur Rahman,
D.A.G with Mr. Bishawjit Debnath, D.A.G
Ms. Shuchira Hossain, Assistant Attorney
General with Ms. Ms. Samira Tarannum
Rabeya, Assistant Attorney General.

..... For the Government.

Mr. A.M. Mahbub Uddin with Mr. Saqeb
Mahbub, Advocates.

...For the petitioner.

The 18th February, 2019

Present:

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Razik-Al-Jalil

Editors' Note:

In this case petitioner challenged the holding of office by taking oath by the Members of Parliament who were elected for the 11th National Parliament before expiration of the term of the previous Parliament. The petitioner alleged that by taking oath before dissolution of the 10th National Parliament the MPs had violated the Article 123(3) read with Article 148(3) and 72(3) of the Constitution of the Peoples' Republic of Bangladesh and there existed 600 MPs at that time. The High Court Division analyzing different provisions of the Constitution, summarily rejected the writ petition on the ground that Article 148(3) of the Constitution was incorporated to maintain continuity of running the government for the best interest of democracy. The "deeming clause" that exists under Article 148(3) is to facilitate the continuity of the government. The Court also held that though, upon taking oath, the MPs in reality had not assumed office of Members of Parliament, yet they had assumed office by way of legal fiction created by the Constitution. Therefore, taking oath by the MPs before dissolution of previous parliament was not illegal. This view of the High Court Division was affirmed by the Appellate Division (see 19 SCOB [2024] AD 10).

Key Words:

Article 123(3), Article 148(3) and 72(3) of the Constitution of the Peoples' Republic of Bangladesh; Deeming Clause; Parliamentary Election; Member of Parliament; Legal Fiction

Article 56(3), 57 and 58 of the Constitution of the Peoples' Republic of Bangladesh:**The government cannot have any break in its continuity:**

When an election to national parliament takes place and returned candidates are declared, the framers of the Constitution have incorporated this provision, namely sub-article (3) of Article 56, for appointment of a member of parliament as Prime Minister, so that no break takes place in the continuity of the government. This provision has been incorporated so that even if the parliament does not sit in its first meeting, there cannot be any vacuum in the running of the governance and for such continuity of the government, the President shall appoint the majority leader of the new parliament as Prime Minister, who then shall form his or her cabinet according to her desire in accordance with the relevant provisions of the Constitution. Therefore, it appears that though there may be a break between one parliament and another parliament, the continuity of the government cannot have any break, and even if the Prime Minister becomes disqualified to continue as Prime Minister, he or she will still continue under Article 57 unless and until the next Prime Minister takes upon the office. The tenure of the Minister is also the same as provided by Article 58, in that he/she will also continue to hold office until his or her successor enters upon such office. Therefore, it appears from this chapter of the Constitution, dealing with the executive branch of the State, that the government cannot have any break in its continuity and the framers of the Constitution have nicely balanced different Articles of the Constitution to provide such continuity of the government. ... (Para 19)

Article 123 (3) and 148(3) of the Constitution of the Peoples' Republic of Bangladesh:**MPs take oath to discharge their duties upon which they do not enter immediately, rather they are about to enter:**

The framers of the Constitution in one place of the Constitution has provided that the MPs shall not assume office before expiration of the tenure of the last parliament, in another place it has provided that an MP shall be deemed to have assumed such office once he takes oath even before the first meeting of parliament or even before dissolution of the last parliament. As stated above, there is a latent purpose in the Constitution for incorporating this deeming provision which is the continuity of the government or the executives. This purpose become more clear when we see the prescribed form of oath to be taken by the MPs as incorporated in the 3rd Schedule to the Constitution. Unlike other oaths therein, the MPs take oath to discharge their duties upon which they do not enter immediately, rather they are about to enter. ... (Para 21)

Article 123 (3) and 148(3) of the Constitution of the Peoples' Republic of Bangladesh:**MPs who took oath even before the first meeting of the parliament shall not in fact or in reality assume such office of members of parliament before expiration of the tenure of the last parliament:**

This 'deeming clause' has been incorporated in sub article (3) of Article 148 just to facilitate such working and continuity of the government. Though, upon taking oath, the MPs in reality have not assumed office of members of parliament, yet they have assumed office by way of legal fiction created by the Constitution and that legal fiction must be interpreted by this Court limiting the same to be used for the said purpose only. It is apparent from the examination of the relevant provisions of the Constitution as

mentioned above that our legislature has deliberately created this legal fiction so that the next executive government can be formed and appointed by the President. This intention of the legislature has been made clear by proviso to sub article (3) of Article 123 wherein it has been provided that such MPs shall not assume office as members of parliament except after the expiration of the term of the previous parliament. This means that, the MPs who took oath even before the first meeting of the parliament shall not in fact or in reality assume such office of members of parliament before expiration of the tenure of the last parliament. ... (Para 22)

JUDGMENT

Sheikh Hassan Arif, J:

1. The petitioner, who is an advocate of the Supreme Court of Bangladesh, has filed this application under Article 102 (2)(a)(ii) and (b)(ii) of the Constitution of the People's Republic of Bangladesh in the form of writ of quo-warranto seeking a Rule upon the Speaker of Parliament, Election Commission and all Members of Parliament, who have recently been elected as such in the National Parliamentary Election held on 30.12.2018, mainly on the ground that the said members of parliament have taken oath and assumed their office as member of parliament (MP) in violation of the provisions under Article 123 (3) read with Articles 148(3) and 72 (3) of the Constitution.

2. It is contended by the petitioner that being an advocate of this Court, he is a vigilant citizen of this country and is highly interested in the establishment of rule of law in the country, and compliance of mandatory provisions of the Constitution by the public functionaries particularly those who have taken solemn oath to preserve, protect and defend the Constitution. According to him, on 05.01.2014, the 10th National Parliamentary Election was held and the members of parliament (MPs) elected therein took oath on 09.01.2014 after the publication of official gazette as regards their result and, accordingly, the cabinet then, was formed on 12.01.2014. That thereafter, on 29.01.2014, the first meeting of the 10th national parliament was held and, according to Article 72(3) of the Constitution, the tenure of the said 10th national parliament expired on 28.01.2019 i.e. after completion of five years term from the date of its 1st meeting. That the official web-site of Bangladesh Jatiya Sangsad also declares that the 1st meeting of the 10th parliament was held on 29.01.2014. That the election for the 11th National Parliament was held on 30.12.2018, under the supervision of the Election Commission wherein election was held in 299 constituencies of Bangladesh. That in view of the provisions under Article 19 (3) of the Representation of Peoples Order 1972, the Election Commission declared the official result of the returned candidates in the said election on 01.01.2019 vide gazette notification. Though, according to the petitioner, there was no time limit mentioned in the Constitution under Article 39 (4) to publish such a gazette, the oath of the newly elected MPs was administered at 11A.M. on 03.01.2019 in a ceremonial way and thereafter, on the same day, the Hon'ble President appointed Sheikh Hasina MP as the Prime Minister of Bangladesh to form cabinet under her leadership and, accordingly, a gazette notification was published on the same day, i.e. on 03.01.2019, followed by a gazette dated 07.01.2019 appointing her as the Prime Minister of Bangladesh. That on the same day, a further gazette was published pursuant to Article 56(ii) of the Constitution and Rule 3 (iv) of the Rules of Business, 1996 announcing the names of the Ministers, State Ministers and Deputy Ministers. Accordingly, they took oath as Ministers, State Ministers and Deputy Ministers on 07.01.2019. It is contended that on the same day, 47

individuals including 7, who were not members of 10th National Parliament, took oath as ministers and the said seven members are Mr. AK Abdul Monem, Mr. S.M. Rezaul Karim, Mr. Mostafa Jabbar, Mr. Md. Murad Hasan, Mrs. Habibun Nahar, Mr. A K M Enamul Huq Shamim and Mr. Mohilbul Hassan Chowdhury. That the first cabinet of the new government held its meeting on 21.01.2019, even though the first meeting of the 11th parliament was held on 30.01.2019.

3. According to the petitioner, since Article 148 (3) of the Constitution mandates that the persons who are required to take oath before entering an office, shall be deemed to have entered office immediately after such an oath, the said MPs entered the office of MP on the day when they took oath as members of parliament. Therefore, according to him, on the day they took oath, there were about six hundred members of parliament, which is clearly in contradiction to the provisions of the Constitution. It is also contended that by virtue of taking oath, even before the first meeting of the 11th parliament, in particular, when the tenure of the earlier parliament did not expire, said MPs grossly violated the Constitutional provision and as such they cannot remain in office as members of parliament. It is also contended that since the cabinet was formed even before the first meeting of the 11th parliament, the MPs who took oath as ministers also committed gross illegality in violation of the Constitution. Accordingly, it is contended by the petitioner that, a Rule should be issued by this Court in the form of qua-warranto calling upon the said MPs, as to under what capacity are they holding such office of the members of parliament in particular, when they entered office when the previous MPs were also existing in the said office as members of parliament.

4. Since the petitioner in this writ petition has raised a serious constitutional issue, we have had no option but to hear the learned Attorney General before deciding whether we should issue Rule Nisi in this matter. Accordingly, Mr. Mahbubey Alam, learned Attorney General, has made submissions before this Court by referring to various articles of the Constitution. At the out-set, he submits that the petitioner is just a busy-body and he has no genuine interest in filing this writ petition and that he had moved a writ petition earlier, being Writ Petition No. 426 of 2019, raising almost the same issues, even though the said writ petition was moved seeking a Rule of certiorari. However, according to him, since the petitioner could not satisfy a different Bench of this Court, the said petition was rejected as being not pressed.

5. Learned Attorney General submits that it has not been shown or stated in the petition that the said MPs were elected illegally or their election was unlawful or even that they are disqualified for any reason to become members of parliament. Therefore, according to him, in so far as this writ petition is concerned, it has only challenged the oath taking by the said MPs for which the said MPs have got nothing to do as the said ceremony of oath taking is the matter of parliament secretariat. By referring to the special nature of 'oath' being taken by members of parliament, as incorporated in the 3rd Schedule to the Constitution, learned Attorney General submits that the form of oath of members of parliament is quite unique and not similar to the other oaths mentioned in the said third schedule. He submits that the members of parliament do not assume office in reality whenever they take oath, rather the Constitution has created a legal fiction as regards assumption of office by the members of parliament upon taking oath only for the purpose of forming a government or cabinet so that there is no break in the running of the government and governance of the country. According to him, the framers of the Constitution have deliberately incorporated the words 'যে কর্তব্যভার গ্রহন করিতে যাইতেছি' ('the duties upon which I am about to enter') in the oath of MPs.

Distinguishing these very words, as used in the form of oath, from the words used in other oaths under the 3rd schedule, learned Attorney General submits that this very oath clearly indicates that upon taking oath the MPs do not become MPs in reality, rather they fictionally assume office of members of parliament for certain purposes. According to him, it is the mandate of Article 56 of the Constitution that an MP will not assume office in reality until he sits in the parliament and only when the first meeting of the parliament takes place, the MPs elected may assume office in reality. In support of above submissions, Mr. Murad Reza, learned Additional Attorney General, has cited various decisions of our superior Courts, namely case of the **National Board of Revenue vs Abu Saeed Khan, 18 BLC (AD)-116, Abdur Rab Mia vs District Registrar, 4 BLC(AD)-8, Dartic Das Gupta vs. Election Commission, VIII ADC-578 and Dr. Kamal Hussain and others vs Muhammad Sirajul Islam, 21 DLR(SC)-23.**

6. In the course of the hearing, Mr. A.M. Mahbub Uddin, learned advocate appearing for the petitioner, by reiterating the statements in the writ petition, has referred to Article 72(3), Proviso to sub-Article (3) of Article 123 and sub-Article (3) of Article 148 of the Constitution and has repeatedly made prayers for issuance of a Rule Nisi at least for examination of the issues raised by the petitioner.

7. Before deciding on the prayer made by the learned advocate to issue Rule, we thought it was advisable to examine whether the issues raised by the petitioner do in fact deserve any consideration or examination by this Court, in particular when about 300 newly elected MPs would be required to show cause before this Court regarding their capacity of holding office after issuance of such Rule. Therefore, we have decided to give a second thought after examining all relevant provisions of the Constitution before issuance of Rule in this matter.

8. Since learned advocates for the petitioner have repeatedly relied on sub-Article (3) of Article 72, proviso to sub-Article (3) of Article 123 and sub-Article (3) of Article 148, the said provisions of the Constitution are reproduced herein-below for ready reference:

“72. (1).....

(2).....

(3) *Unless sooner dissolved by the President, Parliament shall stand dissolved on the expiration of the period of five years from the date of its first meeting.*”

“123. (1).....

(2).....

(3) *A general election of the members of Parliament shall be held-*

(a) in the case of a dissolution by reason of the expiration of its term, within the period of ninety days preceding such dissolution; and

(b) in the case of a dissolution otherwise than by reason of such expiration, within ninety days after such dissolution.

Provided that the persons elected at a general election under sub-clause (a) shall not assume office as members of Parliament except after the expiration of the term referred to therein.”

“148. (1).....

(2).....

(3) *Where under this Constitution a person is required to make an oath before he enters upon an office he shall be deemed to have entered upon the office immediately after he makes the oath.*”

(Underlines supplied)

9. It appears from sub-Article (3) of Article 72, as quoted above, that unless dissolved before expiration of the tenure, the tenure of the parliament will continue up to the expiration of five years from the date of its first meeting. Admittedly, the first meeting of the 10th Parliament took place on 29.01.2014 and, accordingly, the tenure of the said parliament was supposed to be expired on 28.01.2019. It further appears that, according to the proviso to sub-Article (3) of Article 123, there is a prohibition on the Members of Parliament that they shall not assume office as members of parliament except after expiration of the term of the earlier parliament. Now, the provisions under sub-Article (3) of Article 148 provides that where any person under the Constitution is required to make oath before he enters upon an office, he shall be deemed to have entered upon such office immediately after he takes the oath. Therefore, as suggested by the learned advocates for the petitioner, there is an apparent clash between these provisions in particular in the attending facts and circumstances of this case.

10. Admittedly, the newly elected MPs in the 11th parliamentary election took oath on 03.01.2019 and thereafter the cabinet was formed, even though the tenure of the 10th parliament expired after those incidents, i.e. on 28.01.2019. Therefore, according to the learned advocate, if upon taking oath the MPs elected are deemed to have assumed office of Member of Parliament, they have entered such office even before expiration of the tenure of the 10th Parliament, which is clear violation of the proviso to Article 123(3).

11. To address these suggested clashes between the oath taking and the specific provisions of the Constitution, we need to examine the relevant provisions of the Constitution at length, in particular, to understand the ‘deeming clause’ as incorporated in sub-Article (3) of Article 148. It has been decided repeatedly by superior Courts of this sub-continent that a ‘deeming clause’ incorporated in the statute or the Constitution is incorporated by the legislatures to provide a legal fiction in order to provide existence of something for a particular purpose which in fact does not exist in reality. Our late lamented constitutional lawyer Mr. Mahmudul Islam in his well published and circulated book, **“Interpretation of Statutes and Documents, (Mullick Brothers, P-87)”**, has stated as follows:

“The legislature sometimes creates legal fiction by using words which are called ‘deeming clause’. A legal fiction is one which is not an actual reality, but the legislature mandates and the courts accept it to be a reality, though in reality it does not exist. The effect of such deeming clause is that a position which otherwise would not obtain is deemed to obtain under the circumstances.”

12. This paragraph in the said book of Mahmudul Islam has been relied upon by both the parties in the course of arguments. However, none of the parties has referred to the concluding parts thereof wherein he has categorically stated that a ‘deeming clause’ is incorporated in a particular statute or Constitution for a particular purpose only and such deeming clause cannot be interpreted beyond such purpose. In this regard, he has observed:

“The Court has to determine the limits within which and the purposes for which the legislature has created the fiction; the court is to find out the limit of the legal fiction and not to extend the frontier of the legal fiction.”

13. In another part of the same chapter, he has observed:

“However, in construing the deeming clause, it should not be extended beyond the purpose for which it is created or beyond the language of the section by which it is created; it cannot be extended by importing another fiction”.

14. The limited purpose of such deeming clauses has also been pointed out in some other renowned textbooks. As for example, the textbook authored by Justice J.P. Singh, **Principles of Statutory Interpretation, 11th Edition (2008), Wada and Nagpur**. By referring to various judgments of the Indian Supreme Court, the author has observed at page -371 as follows:

“But although full effect must be given to the legal fiction as already noticed, it should not be extended beyond the purpose for which it is created.”

15. By quoting the observation of Chief Justice S.R. Das of Indian Supreme Court (while he was performing the functions as acting chief justice) in Bengal Immunity Company Limited vs. State of Bihar, author observed:

“Legal fictions are created only for some definite purpose and a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field.”

16. Again, in **Radha Kissen Chamaria vs Durga Prashad Chamaria, AIR 1940 PC-167 page-170**, wherein a deeming clause under Section 19(3) of the Bengal Public Demands Recovery Act, 1913, was under consideration of the Privy Council, which provided that a certificate holder shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof, the Privy Council pointed out that the legal fiction created thereby was for a limited purpose of enabling the certificate holder to execute the decree and to satisfy his own claim out of the proceeds of such execution, but he was not in a position of an assignee of the decree so as to acquire all the rights of the original decree holder in the decree.

17. Therefore, it appears from the above examples of cases as well as comments made by the reputed authors on the said cases that a ‘deeming clause’, as incorporated in any statute or Constitution, has to be interpreted depending on the context for which the same was incorporated in particular as against the purpose for such incorporation and the purpose for use of such deeming clause.

18. To find out the purpose of the ‘deeming clause’ as incorporated in sub-article (3) of Article 148 of the Constitution of Bangladesh, we need to examine the relevant provisions of the entire Constitution. Part-V of our Constitution has incorporated the provisions relating to the establishment and running of the parliament, i.e. legislature of Bangladesh. According to Article 65, there shall be a parliament for Bangladesh to be known as the House of Nation (জাতীয় সংসদ) whereupon the legislative functions of the State shall be vested. Article 66 has provided the qualifications and disqualifications for the members to be elected to the said house as members of parliament. Article 72 is more relevant for the purpose of this writ petition, in particular sub-articles (2) and (3) of the same. According to sub-article (2) of Article 72, the parliament shall be summoned to meet within 30(thirty) days after the declaration of the results of polling at any general election of members of parliament. Therefore, according to the Constitution, once gazette notification is published by the Election Commission declaring the names of the returned candidates, the parliament has to resume its meeting within thirty days from the date of such publication. Sub-article (3) of Article 72 provides that unless dissolved soon by the President, the parliament shall stand dissolved on the expiry of the five years period from the date of its first meeting. Article 74(1) provides that in the first meeting of the Parliament, it shall elect its Speaker and Deputy Speaker. Though there are many other relevant important provisions under the said chapter,

which are applicable to parliaments and its members, we do not need to discuss them for the purpose of this writ petition.

19. However, it is relevant to examine the provisions regarding formation of the government which are dealt with under Chapter-II of Part-IV of the Constitution. According to Article 55 therein, there shall be a cabinet for Bangladesh having the Prime Minister at its helm, and all executive power of the republic shall be exercised by, or, on the authority of the Prime Minister. Article 56, at the same time, has incorporated provisions as to how the Ministers, State Ministers and Deputy Ministers are appointed as to be determined by the Prime Minister. In this regard, Article 56 (3) is very much relevant for this writ petition. According to this sub-article, it is the President who appoints Prime Minister who shall be a Member of Parliament who, according to the President, commands the support of the majority of the members of Parliament. Therefore, in the present scenario, when the election to the 11th parliament was held and the returned candidates were declared, it was incumbent upon the Hon'ble President of Bangladesh to appoint a Prime Minister first, who shall be a Member of Parliament being returned in the said election, as elected candidate, and who should appear to the President as commanding the support of the majority members who were elected in the said election. Therefore, when an election to national parliament takes place and returned candidates are declared, the framers of the Constitution have incorporated this provision, namely sub-article (3) of Article 56, for appointment of a member of parliament as Prime Minister, so that no break takes place in the continuity of the government. This provision has been incorporated so that even if the parliament does not sit in its first meeting, there cannot be any vacuum in the running of the governance and for such continuity of the government, the President shall appoint the majority leader of the new parliament as Prime Minister, who then shall form his or her cabinet according to her desire in accordance with the relevant provisions of the Constitution. Therefore, it appears that though there may be a break between one parliament and another parliament, the continuity of the government cannot have any break, and even if the Prime Minister becomes disqualified to continue as Prime Minister, he or she will still continue under Article 57 unless and until the next Prime Minister takes upon the office. The tenure of the Minister is also the same as provided by Article 58, in that he/she will also continue to hold office until his or her successor enters upon such office. Therefore, it appears from this chapter of the Constitution, dealing with the executive branch of the State, that the government cannot have any break in its continuity and the framers of the Constitution have nicely balanced different Articles of the Constitution to provide such continuity of the government.

20. Now, the provisions dealing with the election are incorporated under Part -VII of the Constitution wherein, although all provisions are not relevant for the purpose of this writ petition, sub-article (3) of Article 123 is relevant. It appears from the said provisions that in case of dissolution of parliament by expiration of its tenure, the general election of members of Parliament shall be held within a period of 90 days preceding such dissolution and if such dissolution of parliament takes place for any other reason, such election shall be held within 90 days after such dissolution. Proviso to sub-article (3) provides that such elected members of the parliament shall not assume office as members of parliament except after the expiration

of the term referred to in Clause-(a) of sub-article (3). This means that, until the five years term has expired from the first meeting of the last parliament, the members of new parliament cannot assume office in reality. However, this provision has to be read with the provisions, in particular the 'deeming clause', as incorporated in Article 148 as quoted above.

21. It appears from Article 148 that it has been incorporated under a different part of the Constitution, namely Part-XI, under the heading 'Miscellaneous'. This article under sub-article (1) provides that the persons elected or appointed to offices mentioned in third schedule shall take oath as mentioned therein before entering upon such office. Sub-article (2) provides that under this Constitution when oath is required to be taken by any such person before entering such office, such oath may be administered by such person or at such place as may be designated in the Constitution. Sub-article (2A), as incorporated by the 14th amendment to the Constitution, provides that such taking of oath or administering of oath must be done within three days from publication of the official gazette of results of election, by the election commission and an additional three days may be allotted to administer such oath to the members of the parliament, by the Chief Election Commissioner, if for any reason the person designated in the Constitution does not administer oath. Sub-article (3) of this Article 148, which is the crux of all disputes in this writ petition, has provided a 'deeming clause'. According to this provision, where a person is required by the Constitution to make an oath before entering upon any office, he shall be deemed to have entered upon such office immediately after he takes the oath. Therefore, it appears that, the framers of the Constitution in one place of the Constitution has provided that the MPs shall not assume office before expiration of the tenure of the last parliament, in another place it has provided that an MP shall be deemed to have assumed such office once he takes oath even before the first meeting of parliament or even before dissolution of the last parliament. As stated above, there is a latent purpose in the Constitution for incorporating this deeming provision which is the continuity of the government or the executives. This purpose become more clear when we see the prescribed form of oath to be taken by the MPs as incorporated in the 3rd Schedule to the Constitution. Unlike other oaths therein, the MPs take oath to discharge their duties upon which they do not enter immediately, rather they are about to enter. Even it is stated in the petition by the writ petitioner himself under paragraph 4 that though the first meeting of the 10th parliament was held on 29.01.2014, the cabinet was formed before the said meeting, i.e. on 12.01.2014, and the MPs took oath even before i.e. on 09.01.2014. This scenario will be found in respect of other parliamentary elections of Bangladesh as well.

22. Once the MPs are declared elected or returned by the Election Commission by gazette, it becomes necessary for them to take oath and this necessity arises because of the relevant provisions of the Constitution in order to form a new government. This intention of the Legislature is very much clear in sub-article (3) of Article 56 of the Constitution whereby the President is required to appoint a newly elected MP, who commands majority support of the members of parliament, as Prime Minister of the country. Therefore, for such appointment of an MP as Prime Minister, the first meeting of the parliament is not necessary to take place. Rather, it is the discretion of the Hon'ble President to appoint a member of parliament who, according to him, commands the majority support of newly elected members

of parliament. The exact same thing has happened in the 11th Parliamentary Election and the incidents unfolded thereafter. When the MPs took oath on 03.01.2019, on the same day the President realized that Sheikh Hasina, the newly elected MP in the said election, was commanding the majority support of the elected MPs and for such satisfaction of the president under the Constitution, he is not required to wait until the first meeting of parliament. This provision in the Constitution has been incorporated, amongst others, for the sake of continuity of the government in the best interest of democracy. Therefore, after appointing Prime Minister on 03.01.2019, the Prime Minister determined as to who would be the Ministers, State Ministers and Deputy Ministers in her cabinet and, accordingly, such MPs and some non-MPs were also appointed as Ministers, State Ministers and Deputy Ministers by the President in accordance with the relevant provisions of the Constitution. As discussed above, this 'deeming clause' has been incorporated in sub article (3) of Article 148 just to facilitate such working and continuity of the government. Though, upon taking oath, the MPs in reality have not assumed office of members of parliament, yet they have assumed office by way of legal fiction created by the Constitution and that legal fiction must be interpreted by this Court limiting the same to be used for the said purpose only. It is apparent from the examination of the relevant provisions of the Constitution as mentioned above that our legislature has deliberately created this legal fiction so that the next executive government can be formed and appointed by the President. This intention of the legislature has been made clear by proviso to sub article (3) of Article 123 wherein it has been provided that such MPs shall not assume office as members of parliament except after the expiration of the term of the previous parliament. This means that, the MPs who took oath even before the first meeting of the parliament shall not in fact or in reality assume such office of members of parliament before expiration of the tenure of the last parliament.

23. Admittedly, the MPs elected in the 11th parliamentary election did not sit in the first meeting of the parliament before expiration of the tenure of the last parliament. They sat in the first meeting of the parliament on 30.01.2019 i.e. two days after the expiration of the tenure of the 10th parliament. Therefore, even though by way of legal fiction they have in the meantime assumed office of members of parliament, in reality they have not assumed such office until and unless the first meeting of the 11th parliament had taken place. This being the position, we do not find any substance in the submissions of the learned advocates for the petitioner that on the day the MPs in the 11th parliament took oath, they assumed the office of MP and as such on that day there were more than 600 MPs in the parliament. This contention is totally misconceived and bereft of real intent of the concerned Articles of the Constitution. Therefore, for such misconceived concept or idea, we are not inclined to issue any Rule in this writ petition. At the same time, since the idea is a misconceived one and bereft of any logic, we are also not inclined to issue any certificate under Article 103 of the Constitution as prayed for by the learned advocates for the petitioner.

24. Accordingly, this application under Article 102(2)(a)(ii) and (b)(ii) of the Constitution of the People's Republic of Bangladesh is rejected in summary.