

**6 SCOB [2016] HCD 13****HIGH COURT DIVISION  
(Special Original Jurisdiction)**

Writ Petition No. 5232 OF 2011

Mrs. Salma Rahman, AAG with  
Mr. Titus Hillol Rema, AAG  
... For respondents No. 1-11**Md. Saidur Rahman Sarker**  
... PetitionerMr. Fahad Mahmud Khan  
... For respondent No. 12

Versus

**Bangladesh and others**  
... RespondentsHeard on the 15<sup>th</sup>, 18<sup>th</sup> & 19<sup>th</sup> November  
And  
Judgment on the 24<sup>th</sup> November, 2015Mr. Md. Ruhul Quddus with  
Mr. Md. Kamal Parvez  
... For the petitioner**Present:****Ms. Justice Zinat Ara****And****Mr. Justice A.K.M. Shahidul Huq**

**It does not appear that the Election Commission, after admitted declaration of schedule for holding election of Botlagari Union, has taken independent decision of its own considering the facts and circumstances of the case. Rather, it passed the impugned order at the proposal/direction of the Ministry of Local Government, Rural Development and Co-operatives. Therefore, it cannot be said that the impugned order passed by the Election Commission is lawful. ... (Para 13)**

**Since the respondents of this case, who are directly related in this matter, have not denied the case of the writ-petitioner, we have no option but to accept the case of the writ petitioner. ... (Para 17)**

**Judgment****Zinat Ara, J:**

1. In this Rule Nisi, the petitioner has called in question the legality of the office order under Memo No. Ni.Ka.Sha./Ni-1/UP Nirbachan-1 (Parichalana)/Rang-Division/2011/342 dated 01.06.2011 issued by respondent No. 3 (Annexure-M to the writ petition) staying election of Botlagari Union Parishad under Syedpur Upazilla of Nilphamari District, scheduled to be held on 29.06.2011.

2. Pertinent facts necessary for disposal of the Rule are as under:-

The petitioner is a permanent inhabitant of Botlagari Union Parishad under Syedpur Upazilla of Nilphamari District (hereinafter referred to as Boltagari Union). The petitioner is the present Chairman of Boltagari Union and he was a candidate in the election of the Union scheduled to be held on 29.06.2011. Botlagari Union is

constituted with nine Wards and total voters of the Union are 21,954. Out of which, proposal was given to form another Union at Sonakhuli Mouza (shortly stated as Sonakhuli) consisting of 8,846 voters only. The process for constitution of Sonakhuli as a separate Union has started from February, 2010. On 21.09.2010, the Deputy Commissioner, Nilphamary, by Memo No. **জেপ্র/নীফা/এলজি/ইউপি/বিঃ নুঃ ইপা নং/ ৩(১৮)/০৫/৩৬৮** with reference to,- (1) Local Government Division Memo No. **স্বাসবি/ইপি/ইউপি ৪০/২০০৮/৭৬** dated 3<sup>rd</sup> February, 2010, (2) self office Memo No. **জেপ্র/নীফা/এলজি/সাঃ নিঃ/৩(২৪)/০৩/৫৮** dated 24<sup>th</sup> February, 2010 and (3) Upazila Nirbahi Officer, Syedpur Memo No. **ইউএনও/সৈয়দ/এলজি(ইউপি)/০৪-২১/০৫-০৭/৫১৫** dated 22 June, 2010 informed respondent No. 1, Bangladesh, represented by the Secretary, Ministry of Local Government, Rural Development and Co-operatives that the separation of Sonakhuli Mouza from Botlagari Union is not consistent as per **ইউনিয়ন পরিষদ বিভক্তিকরণ নীতিমালা** (shortly, the Nitimala) due to non-fulfillment of criteria relating to population, area and income of the said Mouza. Under the said Nitimala, for formation of a separate Union, a total population of 20,000-25,000, an area of 18-20 square kilo-meters and annual income of Tk. 3,50,000/- are necessary. But Sonakhuli Mouza has a population of 18,595 persons, an area of 11.16 square kilo-meters and a total annual income is of Tk. 1,73,558.57/- only vide Annexure-B to the writ petition. Respondent No. 8 by Memo No. **সঃ কঃ (ভূঃ)/সৈয়দ/১০-১১/২৪৬** dated 10.13.2011 (Annexure-C to the writ petition) issued a letter to respondents No. 10 and 11 for measuring the area of Sonakhuli Mouza. Thereafter, Upazilla Land Officer, Nilphamari on 10.04.2011 published a preliminary list upon demarcation and fixing area, numbers and particulars of three Wards of Sonakhuli Mouza requesting objection, if any, within fifteen days from the date of publishing thereof. However, there is no legal bar to hold election under Memo No. **নিকস/পল্লী ১/১(১০)/ইউপি নি পরিঃ/২০১১/২০৪** dated 20.04.2011 under Paripatra-2 containing that 414 Upazilla have been ordered to hold Union Parishad election between 05.06.2011 to 05.07.2011. On the basis of the said Paripatra-2, respondent No. 5 vide Memo No. **জেনিঅ/নীফা/ইঃ পঃ নিঃ /৭(১১) /২০১০ /১৬৬** dated 26.04.2011 issued advertisement declaring election schedule of Botlagari Union Parishad along with four other Unions under Upazilla Syedpur, District Nilphamari. As per schedule, the election was scheduled to be held on 29.06.2011. Thereafter, respondent No. 7 by Memo No. **ইউএনও/সৈয়দ/এলজি(ইউপি)/০৪-২১/০৭-১০/৩৮৫** dated 03.05.2011 issued a letter to respondent No. 4 for taking steps for publishing Gazette Notification under section 13(8) of the Local Government (Union Parishad) Ain, 2009 (hereinafter referred to as the Ain, 2009). After scrutinizing Sonakhali Union Parishad Formation Report, the Deputy Director, Local Government, Nilphamari, by Memo No. **জেপ্র/নীফা/এলজি/ইউপি/বিনুইগ্রাস ৩(১৮) /০৫-১১ /১৫৫** dated 16.05.2011 issued a letter to respondent No. 7 to follow the Ain, 2009 correctly. Respondent No. 6 by Memo No. **উনিঅ/সৈয়দ/ইউঃ পঃ নির্বাচন ৬(১)/২০১০-২৪** dated 22.05.2011 published advertisement of election of Botlagari Union and declared that nomination papers will be accepted between 23.05.2011 and 03.06.2011. The petitioner, the present Chairman of Botlagari Union, in response to the said advertisement, applied to

respondent No. 6 for contesting the election by depositing Tk. 5,000/- through Challan in Form No. 69 dated 31.05.2011. Respondent No. 6 on 02.06.2011 received the application of the petitioner being application No. 2 dated 02.06.2011. Respondent No. 4 by Memo No. জেপ্র /নীফা /এলজি /ইউপি /বিনুইগস /৩(১৮) /০৫-১১ dated 23.05.2011 requested respondent No. 1 to hold election of Botlagari Union. Respondent No. 6 by Memo No. ইউনও /সৈয়দ /এলজি(ইউপি) /০৪-২১/০৭-১১/৪১৬ dated 24.05.2011 submitted a report to respondent No. 4 to take further step in forming separate Union at Sonakhuli Mouza. The respondent No. 3 by Memo No. নিকাস /নি-১ /ইউপি নির্বাচন-১ (পরিচালনা) রং-বিভাগ /২০১১ /৩৪২ dated 01.06.2011 (hereinafter stated as the impugned order) issued order staying the election of Botlagari Union scheduled to be held on 29.06.2011.

3. In the backdrop of the aforesaid admitted facts and circumstances, the petitioner has filed this writ petition and obtained the Rule.

4. Respondent No. 12, the Convener of Sonakhuli Union Parishad Bastobayon Committee, contested the Rule by filing an affidavit-in-opposition denying part of the statements made in the writ petition contending, inter-alia, that the Upazilla Nirbahi Officer, Syedpur, lawfully requested the Deputy Commissioner, Nilphamari, for forming a separate Union as per the Ain, 2009; that there is no impediment under any law to create a new Union, namely, Sonakhuli Union Parishad; the grounds set forth in the writ petition are vague, without basis, unspecified, indefinite; that the schedule date of election of Sonakhuli Union Parishad expired long before and, as such, the impugned order has lost its efficacy and the Rule is, thus, liable to be discharged.

5. Mr. Md. Ruhul Quddus, the learned Advocate for the petitioner, appearing with Mr. Md. Kamal Parvez, takes us through the writ petition, the annexures thereto and put forward the following arguments before us:-

- (1) the impugned order dated 01.06.2011 (Annexure-M to the writ petition) has been issued from the Election Commission Secretariat (respondent No. 3) pursuant to motivated recommendations of respondents No. 4 and 6;
- (2) the impugned order has been issued violating the provision of section 13(8) of the Ain, 2009;
- (3) Gazette Notification for formation of a separate Union at Sonakhuli Mouza has not yet been published according to the provision of the Ain, 2009 and, as such, there is no legal bar to hold election of Botlagari Union;
- (4) from the letter issued by respondent No. 4 (Annexure-B to the writ petition) it is evident that Sonakhuli Mouza does not fulfill the conditions relating to population, area and income to form a separate Union as required under the Nitimala;
- (5) in the above scenario, the impugned order issued by the Election Commission Secretariat under the signature of Assistant Secretary at the instruction of the Government, without taking independent decision by the Election Commission, after publication of the election schedule, is without lawful authority, arbitrary, malafide and liable to be struck down;

- (6) the respondents should be directed to declare fresh election schedule for holding election of Botlagari Union.

6. In reply, Mr. Fahad Mahmood Khan, the learned Advocate for added respondent No. 12, contends that there is no legal bar to create a new Union, namely, Sonakhuli Union Parishad. He next contends that Upazilla Nirbahi Officer, Syedpur lawfully requested the Deputy Commissioner, Nilphamari to constitute a separate Union as per the Ain, 2009. He finally contends that the date of election of Botlagari Union, as declared by the District Election Commissioner, Nilphamari, has expired long before and, as such, the Rule is liable to be discharged.

7. Mr. Khan, however, frankly concedes that there is no legal bar in holding election of Botlagari Union, due to the initiation of a process for formation of another Union i. e. Sonakhuli Union.

8. Ms. Salma Rahman, the learned Assistant Attorney General, appearing with Mr. Titus Hillol Rema, the learned Assistant Attorney General, present in court, has not made any submission before us, as they have not received any instruction from respondents No. 1 to 11.

9. We have examined the writ petition, the affidavit-in-opposition submitted by added respondent No. 12 and the connected materials on record and the relevant provisions of law. We have also examined the impugned order (Annexure-M to the writ petition).

10. In this writ petition, the only question to be decided by us is the legality of the order under Memo No. নিকাস/নি-১/ইউপি নির্বাচন/(পরিচালনা)/রং-বিভাগ/২০১১/৩৪২ dated 01.06.2011 issued by the Election Commission Secretariat under the signature of the Assistant Secretary.

11. To examine the legality of the impugned order, it is necessary to quote the relevant portion of the said order which reads as under:-

“.....বর্ণিত অবস্থায় স্থানীয় সরকার বিভাগ কর্তৃক প্রেরিত প্রস্তাব অনুযায়ী নীলফামারী জেলার সৈয়দপুর উপজেলাধীন বোতলাগাড়ী ইউনিয়ন পরিষদের অবশিষ্ট ০৬টি ওয়ার্ডের সীমানা নির্ধারণ চূড়ান্ত না হওয়া পর্যন্ত উক্ত বোতলাগাড়ী ইউনিয়নের নির্বাচন স্থগিত রাখার নিমিত্তে স্থানীয় সরকার, পল্লী উন্নয়ন ও সমবায় মন্ত্রণালয়, স্থানীয় সরকার বিভাগ, ইপ-১ অধিশাখা এর প্রেরিত প্রস্তাব নির্বাচন কমিশন অনুমোদন করেছেন।”

(Underlined by us)

12. From the above order, it transpires that the Election Commission has not taken any decision independently while passing the impugned order dated 1<sup>st</sup> June, 2011 after declaration of election schedule. The Election Commission, for the purpose of holding election of a Union, has to work independently and take decision independently considering the facts and circumstances of a Union.

13. From the above quoted order, it does not appear that the Election Commission, after admitted declaration of schedule for holding election of Botlagari Union, has taken independent decision of its own considering the facts and circumstances of the case. Rather, it passed the impugned order at the proposal/direction of the Ministry of Local Government, Rural Development and Co-operatives. Therefore, it cannot be said that the impugned order passed by the Election Commission is lawful.

14. Mr. Fahad Mahmood Khan, the learned Advocate for respondent No. 12, also admits that there is no legal bar in holding election, if the process for formation of another Union Parishad is going on.

15. We would further like to note that in this case,- (1) Bangladesh, represented by the Secretary, Ministry of Local Government, Rural Development and Co-operatives, (2) the Election Commission for Bangladesh, represented by the Chief Election Commissioner and Election Commissioners, Election Commission Secretariat, (3) the Secretary, Election Commission Secretariat, (4) the Deputy Commissioner, Nilphamari, (5) the District Election Officer, Nilphamari, (6) Upazila Election Officer, Syedpur, Nilphamari, (7) Upazilla Nirbahi Officer and Assistant Returning Officer, Syedpur, Nilphamari, (8) The Assistant Commissioner (Land), Syedpur, Nilphamari and (9) The Deputy Election Commissioner, Rangpur and two others have been made parties as respondents. But, unfortunately, none of the said respondents appeared to contest the Rule by filing any affidavit-in-opposition denying and controverting the statements made in the writ petition.

16. Added respondent No. 12 is the Convener of a Committee for the purpose of formation of Sonakhuli Union Parishad. But the learned Advocate for respondent No. 12 also concedes the legal proposition that there is no legal bar to hold election, if the process of formation of another Union Parishad from a Mouza of a Union Parishad is going on.

17. Since the respondents of this case, who are directly related in this matter, have not denied the case of the writ-petitioner, we have no option but to accept the case of the writ petitioner.

18. This view of ours is supported by the decision in the case of Government of Bangladesh and others vs Md. Gazi Shafiqul and others reported in 19 BLC (AD) (2014) 163, wherein it has been decided as under:-

“.....  
Admittedly, when no affidavit-in-opposition was filed before the High Court Division denying or controverting the case of the writ-petitioners ....., the High Court Division had no option but to accept the case of the writ-petitioners .....”

19. In view of the above, we are constrained to hold that the impugned order issued by the Election Commission under the signature of the Assistant Secretary (Ni-3), Election Commission Secretariat, is not lawful.

20. Thus, we find merit and force in the submissions of Mr. Quddus and we find no merit in the submissions of Mr. Khan.

21. However, the schedule date of election of Botlagri Union Parishad, Syedpur, Nilphamari, is already over. Therefore, the Election Commission is directed to declare a fresh date of election for the aforesaid Botlagari Union in accordance with law.

22. With the above observations and directions, the Rule is disposed of.

23. No costs.

24. Communicate the judgment to respondents No. 1 to 9 at once.