

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

Present:
Justice Sheikh Abdul Awal
And
Justice Md. Mansur Alam

Writ Petition No. 15399 of 2016

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. Shakhawat Hossain.

..... Petitioner.

-Versus-

Government of Bangladesh represented by
the Secretary, Ministry of Liberation War
Affairs and others.

.....Respondents.

Mr. Md. Abdul Hai with
Ms. Sabina Yeasmin, Advocates

..... For the Petitioner

Mr. Md. Bodiuzzaman Tapadar, D.A.G with
Ms. Salma Sultana (Soma), D.A.G with
Mr. Md. J.R. Khan Robin, A.A.G with
Mr. A.B.M. Ibrahim Khalil, A.A.G with
Mr. Md. Manowarul Islam Uzzal, A.A.G
... For the Government-Respondents.

Heard on 14.08.2025, 18.08.2025 and

Judgment on 19.08.2025

Sheikh Abdul Awal, J:

On an application under Article 102 of the Constitution
of the People's Republic of Bangladesh, a Rule Nisi was issued

calling upon the respondents to show cause as to why the circular being No. 48.00.0000. 004. 75. 105 (3). 161409 issued by the respondent No. 1 published in Additional issue of Bangladesh Gazette dated 04.10.2016 (Annexure-D) in which removing the name of the petitioner from the list (Serial No. 104) of freedom fighters in Circular, being No. মুবিম/প্রঃ৩/মুক্তিযোদ্ধা/গজোত/২০০৩/৪৭৯ published in Additional issue of Bangladesh Gazette, dated 12.05.2005 (Annexure-A2) should not be declared to have been made without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts briefly are that the petitioner is a freedom fighter, who fought for the independence of this country in 1971. Due to contribution of the liberation war of the petitioner his name has been enlisted in the list of Freedom Fighters by the Government of Bangladesh in serial no. 104 (Annexure-A3) and thereupon, the petitioner has been enjoying the monthly honorarium. In this background by the impugned order dated 04.10.16 the petitioner's name has been curtailed from the freedom fighters' list in Bangladesh gazette additional issue dated 4.10.2016 in serial No. 3 stating that-

মোঃ সাখাওয়াত হোসেন এ অনুকূলে মুক্তিযুদ্ধে অংশগ্রহণের স্বপক্ষে কোন গ্রহণযোগ্য দালিলিক প্রমাণাদি বা গ্রহণযোগ্য তথ্য না পাওয়ায় তার মুক্তিযোদ্ধা দাবির বিষয়টি প্রমাণিত হয়নি।

Being aggrieved by the aforesaid additional gazette, the petitioner has come before this court and obtained the rule.

Mr. Md. Abdul Hai, the learned advocate for the petitioner submits that the petitioner fought for this country

during the liberation war in 1971 and due to contribution of the liberation war the petitioner got a series of certificates issued by the authorities including Mr. Muhammad Ataul Gani Osmani, Commander in Chief, Bangladesh Armed Forces and his name also published in the freedom fighters list namely in সাপ্তাহিক মুক্তিবর্তা bearing serial No. 0117010082 and also his name also published in official gazette of Bangladesh bearing serial number 104 in the freedom fighter list and the concerned authority also issued a provisional certificate in his favour and his name was enlisted in freedom fighters' list although at the behest of the then ruling party the petitioner's name has been curtailed by the impugned additional gazette only for political reason. The learned advocate further referring a decision reported in 14 BLC (AD) 41 submits that the authority without issuing any show cause notice upon the petitioner most illegally and arbitrarily curtailed the petitioner's name from the freedom fighters list by the impugned additional gazette, which in fact beyond the scope of law as well as the principle of natural justice and as such, the impugned additional gazette so far as it relates to the petitioner is liable to be declared to have been passed without lawful authority and is of no legal effect.

Mr. Md. Bodiuzzaman Tapadar, the learned Deputy Attorney General, on the other hand, in the facts and circumstances of the case ultimately found it difficult to refute the contentions as raised by the learned Advocate for the petitioner.

Having heard the learned Advocate for the petitioner and the learned Deputy Attorney General and having gone through the writ petition, its annexures and other relevant documents as placed before this Court.

On scrutiny of the record, it appears that in this case the petitioner as Freedom Fighter fought in the liberation war held in 1971 and thereafter, the Government as well as so many authorities including Muhammad Ataul Gani Osmani, Commander in Chief, Bangladesh Armed Forces issued certificates in his favour as Freedom Fighters and his name also published in the civil gazette in serial No. 104 (Annexure- A3) and his name also published in সাপ্তাহিক মুক্তিবর্তা and other newspapers and other valuable documents as Freedom Fighter. It further appears that the petitioner got honorarium since 2013 till removal/curtailing his name from the gazette by the impugned addition gazette dated 04.10.2016 (Annexure-D). It further appears that before passing the impugned additional gazette notification no meaningful official show cause notice was served upon the petitioner to defend him.

In the case of Chairman, Bangladesh Freedom Fighters Welfare Trust and others Vs. Mominul Haque Bhuiyan and others reported in 14 BLC (AD) 41 it has been held that-

Curtailment of Honorarium/Rastrio Sammani Bhata of recognised freedom fighters without affording opportunity to place their case is in total disregard of the universally accepted principle of natural justice-The learned Counsel for the petitioners could not refer to any materials or, in

other words, from the materials as are in the paper books of the respective Petitions for Leave to Appeal nor could produce any materials to establish that before taking the action in respect of the writ petitioners, who established their right to receive Honorarium/Rastrio Sammani Bhata as Freedom Fighters after being listed in the list of Freedom Fighters published in the official gazette and enjoyed the said right for the last 32 years without interruption or question from any corner. In the afore state of the matter, the High Court Division was not in error in making the Rules absolute upon arriving at the finding that the writ petitioners of the respective writ petitions were deprived of their established right of receiving the Honorarium/Rastrio Sammani Bhata in a whimsical and captitious manner and that action impugned i.e. cancellation/curtailment/reduction/stoppage/non-payment of the Honorarium was a malafide action of the writ-respondents and same manifests from the nature and kind of the action complained of and is evident from the materials on record. The materials in the paper books clearly demonstrate that the action was anything but not fair since the writ petitioners were deprived of the benefits, which they acquired upon establishment of the fact of their being freedom fighters and they were paid for the 32 years, of receiving Honorarium/Rastrio Sammani

Bhata in total disregard of the universally accepted principle of natural justice or, in other words, without hearing them or affording an opportunity to place their case, and the action impugned was taken to their prejudice keeping them in the dark. Accordingly, petitions are dismissed.

From the above quoted decision of our Apex Court, we find a clear view of law as it stands today that curtailing the honorarium or “Rastri Sammani Bhata” of recognized freedom fighters without due process of law is a violation of natural justice, which is a widely recognized legal principle of natural justice.

In this case, it appears to us that the authority/JAMUKA without applying their judicial mind to the facts and circumstances of the case and law bearing on the subject most illegally cancelled the petitioner’s gazette notification as freedom fighter by the impugned notification so far as it relates to serial No. 3, which does not deserve to be sustained.

Considering all the facts and circumstances of the case as revealed from the materials on record, we find no cogent reason as to why the respondent No.2 by the impugned additional gazette dated 04.10.2016 cancelling the gazette of the petitioner as Freedom Fighter. Therefore, we are of the view that the circular being No. 48.00.0000.004.75.105(3).161409 issued by the respondent No.1 published in additional issue of Bangladesh Gazette dated 04.10.2016 (Annexure-D) removing the name of the petitioner appended in serial No. 3 of the Additional issue of Bangladesh Gazette (Annexure-D) is not

based on relevant factors. The notification was issued without considering the proper, appropriate, and important considerations that should have guided its creation. This lack of basis in relevant factors indicates the notification was arbitrary, malafide, and potentially discriminatory, making it legally flawed and subject to being declared without lawful authority.

In the result, the Rule Nisi is made absolute. The impugned additional issue of gazette cancelling the name gazette of the petitioner appended in serial No. 3 of the additional of Bangladesh Gazette (Annexure-D) issued by the respondent No.1 is declared to have been made without lawful authority and is of no legal effect.

In the facts and circumstances of the case there will be no order as to costs.

Communicate this judgment and order to the concerned authority at once.

Md. Mansur Alam, J:

I agree.