

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

WRIT PETITION NO. 12351 of 2017

IN THE MATTER OF:

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

IN THE MATTER OF:

Abdul Malek

..... Petitioner.

-Versus-

The Government of Bangladesh and others

..... Respondents.

Mr. Md. Waliuddin, Advocate

..... For the petitioner.

Mr. Mohammad Mohsin Kabir, DAG with

Mr. A.K.M. Rezaul Karim Khandaker, D.A.G

Ms. Shahin Sultana, AAG with

Mr. Md. Manowarul Islam Uzzal, A.A.G and

Mr. Md. Mokhlesur Rahman Babu, A.A.G

..... For the respondents.

Judgment on: 27.11.2025.

Present:

Mr. Justice Sheikh Abdul Awal

And

Mr. Justice S.M. Iftekhar Uddin Mahamud

S.M. Iftekhar Uddin Mahamud, J.

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, the Rule was issued on 22.08.2017 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Gazette Notification No. 48.00.0000.004.75.105(3).16-1409 dated 04.10.2016 published under the signature of the respondent No. 2 (Annexure-G) so far as it relates to the petitioner as serial No.4 cancelling the Freedom Fighter Gazette/certificate of the petitioner being No. 343 dated 09.01.2012 should not be declared without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts, stated in the writ petition, in short, are that the petitioner is the valiant freedom fighter of the Liberation War, 1971 who participated in the liberation war to fight for the country. The name of the petitioner was published in the Gazette on 05.06.2005 and thereafter the name of the petitioner's father was corrected through Gazette Notification dated 09.01.2012 being Serial No. 343. The petitioner obtained several certificates including the provisional certificate issued by the Ministry of Muktijoddha Affairs. The petitioner was receiving monthly honorarium from the Government through the Ministry of Muktijoddha Affairs being book No.41 since January, 2003 and the same was stopped from September 2014. That subsequently, without having any complaint from any corner, respondent No. 11 issued a notification on 22.09.2016 and forwarded the same to the Respondent No.2 for publication of gazette notification by cancelling the freedom fighter gazette/certificate of the

petitioner without issuing any show cause notice upon the petitioner. As a result, on the basis of a report submitted by National Security Intelligence (NSI), the respondent No.2 published Gazette Notification No. 48.00.0000.004.75.105(3).16-1409 dated 04.10.2016 and cancelled the freedom fighter gazette of the petitioner being No.343 dated 09.01.2012.

Being aggrieved by the impugned notification being No. 48.00.0000.004.75.105(3).16-1409 dated 04.10.2016 issued under the signature of Respondent No.2, cancelling the name of the petitioner from the gazette and finding no other alternative and efficacious remedy the petitioner filed this writ petition and obtained the present Rule.

Mr. Md. Waliuddin, the learned advocate appearing for the petitioner submits that the petitioner is a genuine freedom fighter and his name was published in the official gazette but the National Security Intelligence (NSI) after perfunctory investigation submitted a report against the petitioner which is nothing but colorable exercise of power. He further submits that the respondent No.11 issued a notification being No. 48.00.0000.004.75.105(3).16-1409 dated 22.09.2016 and recommended to publish the same in the official gazette to cancel the petitioner's freedom fighter status without giving any show cause notice.

The learned Advocate for the petitioner also emphatically submits that according to the principles of law, if any allegation is brought against a person, he must be given a reasonable opportunity to defend himself or to be heard personally, but in the instance case it appears that the respondents are interested to cancel the freedom fighter

certificate/gazette of the petitioner without being heard which is nothing but illegal, malafide, colorful exercise of powers and violates the principle of natural justice. He further submits that no complaint was lodged against petitioner and that the respondent No.14 did not even inform the petitioner about the lack of papers and documents relating to the freedom fighter status to allow the petitioner to clarify allegations if any and as such, it is beyond doubt that the cancellation of the freedom fighter certificate is without any valid reason and as such, the impugned gazette notification cancelling the freedom fighter gazette/certificate by the respondents is liable to be declared as without any lawful authority and is of no legal effect.

No affidavit-in-opposition has been filed by the Respondents.

Mr. Mohammad Mohsin Kabir, the learned Deputy Attorney General for the State appearing on behalf of the respondents finds it difficult to oppose the Rule on the grounds upon which this Rule was obtained.

We have heard the submissions of the learned Advocate for the petitioner and learned Deputy Attorney General and perused the application and annexures annexed thereto.

It transpires from record that name of the petitioner had been published in Civil Gazette dated 05.06.2005 at serial No.343. Subsequently the name of petitioner's father was corrected through gazette notification dated 09.01.2012 being serial No.343. The petitioner had been enjoying the status of freedom fighter since 2003 including the

monthly allowance/state honorarium as received till 2014 while it was stopped by the respondent No1.

That in petitioner's case, respondents (JAMUKA) reached the conclusion only on the basis of a report submitted by National Security Intelligence (NSI), without issuing any notice to the petitioner to appear before JAMUKA (respondent) and without giving the petitioner any opportunity of being heard.

In such circumstances, it is to be noted that the essential feature of the principle of natural justice is that no person shall be deprived of any vested right by any order, judicial or otherwise without a hearing before an independent authority not interested in the proceedings or in any party to the proceedings.

It is now well settled principle of law that once the privilege is given that cannot be taken away without following due process of law and this principle is applicable in this case as no opportunity was given to the petitioner before cancelling the certificate and gazette of the petitioner by way of the impugned notification dated 04.10.2016.

That respondent Nos. 2-5 were under obligation to conduct the investigation as to the veracity of petitioner's freedom fighter status and in conducting the investigation the respondents were required to be acted fairly. However, respondents did not issue any notice or else give the petitioner an opportunity of being heard before cancelling the certificate and gazette of freedom fighter and such failure of the respondents to issue notice or to give an opportunity to the petitioner violates the lawful right of the petitioner.

That furthermore, it is evident from the instant writ petition and annexures thereto that respondent Nos. 2-5 investigated about the genuinity of the petitioner's freedom fighter status without having any complaint from any corner and that respondent Nos. 2-5 initiated the investigation itself at the instance of National Security Intelligence (NSI) and accepted the report submitted by National Security Intelligence (NSI). It is noteworthy that the petitioner had been enjoying the status and benefits of freedom fighter since 2003 like fellow freedom fighters after exhausting all the processes and so the petitioner has been given a legal right to enjoy such status and benefits without any impediments. Thus, the petitioner has the right to know the reasons why his certificate/gazette is actually cancelled and to that effect, petitioner is required to have an opportunity of being heard to meet those reasons best known to the respondents. However, the respondents hopelessly failed to issue any notice to petitioner whatsoever to meet the queries (if any) and to defend his case, and acted unlawfully in cancelling the certificate/gazette.

It is also settled that any benefit given in favour of any person cannot be curtailed or taken away by any authority without at least giving an opportunity of being heard. The respondents stopped the petitioner's allowance/state honorarium without giving him an opportunity of being heard which is also in violation of the principle of natural justice.

In view of the facts and circumstances as stated above and the reasons of the findings given, we find no cogent reason as to why the

impugned notification being No. 48.00.0000.004.75.105(3).16-1409 dated 04.10.2016 issued under the signature of the respondent No.02 to cancel the gazette/certificate of the petitioner as freedom fighter and also to arbitrarily stop the state honorarium of the petitioner.

Therefore, we are of the view that the impugned notification dated 04.10.2016 was issued mechanically ignoring the correct proposition of law and hence making the decision of cancelling the gazette/certificate of the petitioner unlawful, malafide, arbitrary and is of no legal effect and subject to be declared to have been passed without having any lawful authority.

In the result, the Rule is made absolute. The impugned Gazette Notification No. 48.00.0000.004.75.105(3).16-1409 dated 04.10.2016 published under the signature of the respondent No. 2 (Annexure-G) so far as it relates to the petitioner as serial No.4 cancelling the Freedom Fighter Gazette/certificate of the petitioner being No. 343 dated 09.01.2012 is hereby declared to have been passed without lawful authority and is of no legal effect.

In the light of facts and circumstances as discussed above, the respondents are directed to pay the monthly allowance/state honorarium of the petitioner in accordance with law from the date of receiving a copy of the judgment.

Communicate this judgment to the respondents concern at once.

There is no order as to costs.

Sheikh Abdul Awal, J:

I agree.