

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

**Writ Petition No. 704 of 2019.**

**In the matter of:**

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

-And-

**In the matter of:**

Soman Khan.

..... Petitioner

-Versus-

Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Health and Family Welfare and others.

..... Respondents

Mr. A. F Hasan Ariff, Senior Advocate with  
Mr. Muhammad Shafiuddin Bhuiyan, Advocate  
..... For the petitioner

Mr. B. M. Elias with  
Mr. Md. Mahabubur Rahman Kishore, Advocates  
.....For the respondents No.7.

Ms. Sonia Sarder, Advocate  
. . .For the respondent No.1

Present:

Mr. Justice J. B. M. Hassan  
and  
Mr. Justice Razik Al Jalil

Heard on 08.11.2023, 12.11.2023 and  
Judgment on 14.11.2023

**J. B. M. Hassan, J**

By filing an application under Article 102 of the Constitution, the petitioner obtained this Rule Nisi in the following terms:

“Let Rule Nisi be issued calling upon the respondents to show cause as to why the memo No. ৮(নব-নিয়োগ)২৫/২০১৮/৬২৬ dated

11.10.2018 issued by the respondent No.5 (Annexure-D series to the writ petition) so far as it relates to appointment of Kazi Md. Ahsanullah for the post of Family Planning Inspector (FPI) for the Chakrada Union, Police Station/Upazila-Shibpur, District-Narsingdi (respondent No.7) should not be declared to be without lawful authority and of no legal effect and/ or such other or further order or orders as this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi are that pursuant to a recruitment notification, the petitioner along with others participated in the recruitment process for the post of Family Planning Inspector (FPI) for the Chakrada Union, Police Station/Upazila-Shibpur, District-Narsingdi. After completion of written examination and viva voce examination, the petitioner stood 3<sup>rd</sup> while the added respondent No.7 stood 1<sup>st</sup>. Accordingly, for the sole post, the respondent No.7 got the appointment. In the recruitment notice the mandatory condition was that the candidate must be local resident of the concerned Union, namely, Chakrada Union. But subsequently, the petitioner came to know that the respondent No.7 was not the permanent resident of the concerned Union and so, he was a disqualified candidate. In this backdrop, the petitioner filed this writ petition and obtained the present Rule Nisi.

Annexing the National Identification Card (NID) the petitioner further states that the respondent No.7 is the permanent resident of Chorshibpur, Post Office-Ayabpur-3420, Sonarampur, Upazila-Bansarampur, District-Brahmanbaria and so he did not have the requisite qualification to get the appointment.

The added respondent No.7 has also filed an affidavit in opposition contending, *inter alia*, are that the respondents No. 7 is a permanent resident of the said Chakrada Union under Shibpur Upazilla, District-Narsingdi and

the alleged National ID Card was prepared when the Respondent No. 7 resided in Brahmanbaria. After completing his Higher Secondary Examination (HSC) from Adhyapak Abdul Mazid College, Cumilla, he went for higher study at Shahid Asad Govt. College, Narsingdi and obtained Bachelor of Social Science degree from National Govt. College, Narsingdi in the year of 2009. Thereafter, on 02.07.2014 the Respondent No.7 executed a Baina Deed with one Md. Hafiz Uddin, son of late Md. Musa Ali in order to purchase 01 (One) decimal land in Narsingdi. Accordingly, the Respondent No. 7 purchased land by sale deed dated 19.11.2018 measuring an area of 01 (One) decimal situated within District Narsingdi, Police Station Shibpur, Sub-registry Office-Shibpur, Mouza Arali, J.L. No. R.S.74, R.S. Khatian No. 1024, R.S. Plot No. 389 vide Sale Deed No. 7986 dated 19.11.2018 and mutated his name in the concerned AC land office as per Mutation & Separation Case No. 1887/2021-22 dated 11.01.2022 vide Mutation Khatian No. 2810 and Duplicate Carbon Receipt (DCR) being Book No. M 13351, Page No.14.

The Chairman of 5 No. Chakrada Union Parishad, Shibpur Pourashova, Narsingdi on 04.05.2022 issued a certificate mentioning that the respondent No. 7 is a permanent resident of Chakrada Union Parishad. Administrator, Shibpur Pourashova, Narsingdi also issued a certificate on 22.05.2022 mentioning that the respondent No. 7 is a permanent resident of ward No.07 Shibpur Pourashova, Narsingdi. The respondent No. 7 got married on 05.07.2007 with One Most. Masuda Begum of Village Kanahota, Post Office Shibpur-1620, Police Station Shibpur, District Narsingdi and

started living permanently with his family at Village Kanahota, Police Station Shibpur, District Narsingdi.

Respondent No.7 applied to the concerned authority to transfer his voter area from Brahmanbaria to Narsingdi and accordingly, the authority transferred his voter area from Brahmanbaria to Village Kanahota, Post Office shibpur-1620, Police Station Shibpur, District Narsingdi.

The authority after scrutinizing all the documents of Respondent No. 7 and following due process of law, on 11.10.2018 appointed the Respondents No. 7 in the vacant post of Family Planning Inspector (FPI), Chakrada Union, under Shibpur Upazila, Narsingdi on temporary basis. Subsequently, on 27.03.2022 the service of the Respondent No. 07 has been made permanent by the respondents and as such, the instant Rule and Supplementary Rule have become infructuous.

The respondent No.1 has also filed an affidavit in opposition contending, *inter alia*, that the Writ Petitioner has no locus standi to file the Writ Petition because he took part in the Viva Voice exam but did not pass and that no fundamental right of the petitioner has been curtailed by the impugned order. Further the present writ petition involves disputed question of facts which cannot be resolved in writ jurisdiction. Hence, the Rule Nisi is liable to be discharged.

Mr. A. F Hasan Ariff, learned Senior Advocate for the petitioner submits that the recruitment notice as well as appointment letter specifically required permanent resident of the concerned union to get the appointment in question but the respondent No.7 could not meet the said condition being a permanent resident of different district. Therefore, due to non compliance

of residential condition, there is no scope to continue this appointment by the respondent No.7. He further submits that in the recruitment examination the petitioner stood 3<sup>rd</sup> and the candidate who stood 2<sup>nd</sup> has not come to the Court. Thus, the petitioner is eligible to get the appointment as the respondent No.7 was the disqualified candidate.

Mr. B. M. Elias learned Advocate for the respondent No.7 contends that the petitioner scored 3<sup>rd</sup> position and so, leaving the 2<sup>nd</sup> scorer, the petitioner has no locus standi to file this writ petition because he does not have any scope to get the appointment superseding the candidate who stood 2<sup>nd</sup> and as such, the writ petition is not maintainable. He further contends that the respondent No.7 was all along in the said locality from his academic career by way of marriage and purchasing land in the said area. As such, the respondent No.7 is a permanent resident and meet requisite qualification. He also contends that the enquiry report itself reflects that the respondent No.7 is the permanent resident of the concerned area and so the petitioner's dispute regarding the address of the respondent No.7 is a disputed question of facts which can not be adjudicated under writ jurisdiction. In support of his submissions, learned Advocate refers to the case of Yousuf Ali (Md) Vs Kazi Shamsul Haque and others reported in 11 BLC (AD) 152, the case of Jahangir Alam (Md) Vs Bangladesh represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Dhaka and others reported in 22 BLC (HCD) 22 and an unreported judgment dated 27.07.2010 passed in the case of Abu Nasar Md. Abdur Noor Vs Government of Bangladesh and others being writ petition No. 8167 of 2009.

Ms. Sonia Sarder, learned Advocate for the respondent No.1 has adopted the submissions as advanced by the learned Advocate for the respondent No.7.

We have gone through the writ petition, affidavit in opposition separately filed by the respondents No. 1 and 7, relevant laws, cited cases and other materials on record.

On behalf of the respondent No.3, Director General of the Family Planning Directorate, a recruitment notice was circulated on 22.06.2015 for appointment in several posts and one of them was Family Planning Inspector (FPI) for the Chakrada Union, Police Station/Upazila-Shibpur, District-Narsingdi. For the said post the recruitment notice contained the following conditions No.11 and 12 which run as follows:

“১১। ক্রমিক নং- ১ এ বর্ণিত পরিবার পরিকল্পনা পরিদর্শক (পুরুষ) প্রার্থীকে সংশ্লিষ্ট ইউনিয়নের স্থায়ী বাসিন্দা এবং ক্রমিক নং- ২ এ বর্ণিত পরিবার কল্যাণ সহকারী (মহিলা) প্রার্থীকে সংশ্লিষ্ট ওয়ার্ড/ইউনিটের স্থায়ী বাসিন্দা হতে হবে। তাদের (ক্রমিক নং ১ ও ২) চাকুরী বদলীযোগ্য নহে।

১২। স্থায়ী বাসিন্দার ক্ষেত্রে কোন প্রকার ক্রটি-বিচ্যুতি পরিলক্ষিত হলে বা প্রমানিত হলে তার নিয়োগ আদেশ বাতিল বলে গণ্য হবে।”

(Underlined)

On perusal of the above conditions, it is apparent that the candidate must be a permanent resident of the concerned Union and by the condition No. 12 the condition No. 11 has been introduced as mandatory.

In the appointment letter the authority again reiterated the said condition regarding permanent resident. Therefore, from the above it is apparent that to get appointment in the post of Family Planning Inspector (FPI) for the Chakrada Union, Police Station/Upazila-Shibpur, District-Narsingdi the candidate must be a permanent resident of the said Union and

even upon subsequent disclosure of the default during continuation of service, the appointment would be cancelled.

In this context, question arises as to whether the respondent No.7 who got the aforementioned appointment, is a permanent resident of Chakrada Union under Narsingdi District. The respondent No.7 frankly concedes that he was a resident of Brahmanbaria District. But from his student career he has been residing in the Narsingdi District and subsequently he married to a girl from that locality and also purchased 01(one) decimal land from there. In this context, learned Advocate has also drawn our attention to an enquiry report as contained in Annexure-8 to the affidavit in opposition filed by the respondent No.7. The said enquiry report submitted by the District Special Branch, Narsingdi runs as follows:

“বরাবর

পুলিশ সুপার

জেলা বিশেষ শাখা, নরসিংদী।

বিষয়ঃ তদন্ত প্রতিবেদন।

সূত্রঃ ভিআর নং- ২৩৪

তারিখঃ ১২/০২/২০১৯ খ্রিঃ।

জনাব

যথাবিহীত সম্মান প্রদর্শণ পূর্বক নিবেদন এই যে, সূত্রে বর্ণিত স্মারক মূলে ভিআর খানা আমার নামে হাওলা হলে আমি শিবপুর থানাধীন কানাহোটা সাকিনে হাজির হয়ে স্থানীয় গন্যমান্য ব্যক্তিবর্গের নিকট জিজ্ঞাসাবাদ করি। জিজ্ঞাসাবাদে ও স্থানীয় তদন্তে প্রার্থী কাজী মোঃ আহসান উল্লাহ পিতা-কাজী খলিলুর রহমান, মাতা- মিসেস আমেনা বেগম সাং- কানাহোটা, ডাকঘর ও থানা-শিবপুর, জেলা- নরসিংদী গত জুন/২০০৪ ইং সাল হতে উল্লেখিত ঠিকানায় অবস্থান করিয়া শিবপুর সরকারী শহীদ আসাদ কলেজের ২০০৪ হতে ২০০৮ খ্রিঃ পর্যন্ত অধ্যয়ন করেন, ইতি মধ্যে ২০০৭ ইং সালে শিবপুর থানাধীন কানাহোটা সাকিনের মজনু সরদার এর কন্যা মাসুদা বেগম এর সঙ্গে ইসলামি শরিয়্যা মোতাবেক বিবাহ বন্ধনে আবদ্ধ হন। পরবর্তীতে উক্ত ঠিকানায় স্থায়ী বাসিন্দা হিসাবে বসবাসের নিমিত্তে একই থানাধীন একই সাকিনের, প্রার্থীর দাদা শুশুর মোঃ হাফিজ উদ্দিন, পিতা মৃত- মুসা আলীর নিকট থেকে ২০১৪ সালে নিম্নে তফসিল বর্ণিত সম্পত্তি ০১ (এক) শতাংশ জমি ক্রয়ের উদ্দেশ্যে বায়না করেন।

তফসিল বর্ণিত সম্পত্তি

মৌজাঃ আর এস ৭৪ নং- আড়ালি,

খতিয়ান আর, এস ১০২৪ (এক হাজার চব্বিশ)

দাগঃ আর, এস- ৩৮৯ (তিনশত উননব্বই) নং-দাগে নাল জমি ১ আনায় ১৭ শতাংশের কাত ০১ শতাংশ জমি বায়নাকৃত। পরবর্তীতে ভিআর প্রার্থী উক্ত বায়নাকৃত জমিতে একখানা দোচালা টিনের বসতঘর নির্মান করিয়া স্বপরিবারে বসবাস করিতে থাকে এবং ২০১৮ খ্রিঃ উক্ত বায়নাকৃত তফসিল সম্পত্তি শিবপুর সাব-রেজিষ্টারি অফিসের মাধ্যমে দলিল নং- ৭৯৮৬ তাং ১৯/১১/২০১৮ খ্রিঃ মূলে রেজিষ্ট্রি ভুক্ত হয় বলিয়া তদন্তে জানা যায়। প্রকাশ থাকে যে, প্রার্থীর পিতা, মাতা জন্ম সূত্রে ব্রাহ্মনবাড়ীয়া জেলাধীন বাঞ্ছারামপুর থানার চর শিবপুর গ্রামের স্থায়ী বাসিন্দা। প্রার্থী জন্মসূত্রে বাংলাদেশের নাগরিক এবং বর্তমানে উল্লেখিত ঠিকানার স্থায়ী বাসিন্দা। তিনি ২০০১ সালে বাঞ্ছারামপুর এস, এম পাইলট উচ্চ বিদ্যালয় হতে এস এস সি পরিক্ষায় বিজ্ঞান শাখায় জিপিএ-৩.৫০ পেয়ে উত্তীর্ণ হয়েছেন। তার রোল বাঞ্ছারামপুর-২ নং-১৮৮৮২৭ এবং রেজিঃ নং-৮৫৫৪৮১/১৯৯৯, ২০০৩ সালে অধ্যাপক আব্দুল মজিদ কলেজ, কুমিল্লা হতে এইচ, এস, সি পরীক্ষায় ব্যবসায় শিক্ষা শাখায় জিপিএ-৩.১০ পেয়ে উত্তীর্ণ হয়েছেন। তার রোল মুরাদনগর নং- ৭৬৪৭৬৫ এবং রেজিঃ নং- ৫৯৩৭২৪/০১-০২, ২০০৮ সালে সরকারি শহীদ আসাদ কলেজ, নরসিংদী হতে দ্বিতীয় বিভাগে বিএসএস (অনার্স) পরীক্ষায় উত্তীর্ণ হয়েছেন এবং ২০০৯ সালে নরসিংদী সরকারী কলেজ হতে প্রথম বিভাগে এমএসএস (মাষ্টার্স) পরীক্ষায় উত্তীর্ণ হয়েছেন তার রোল নং- ৯০৪০০৩১ রেজিঃ নং- ৮৯৫৯১৩৬। এসএসসি সনদপত্রানুযায়ী তার জন্ম তারিখ-০২/০৭/১৯৮৬ খ্রিঃ। স্থানীয় ভাবে তার স্বভাব-চরিত্র ভালো বলে জানা যায়। সংশ্লিষ্ট থানা এবং জেলা বিশেষ শাখায় তার বিরুদ্ধে বিরূপ কোন তথ্য পাওয়া যায়নি।

অতএব আপনার সদয় অবগতির জন্য অত্র প্রতিবেদন দাখিল করিলাম।”

The opinion under this report although speaks that the respondent No.7 is a permanent resident of the said area but he is also relying on the facts as claimed by the respondent No.7 in his submissions. On perusal of the aforesaid report and on consideration of the submissions of the learned Advocate for the respondent No.7, it appears that the petitioner was student of Shibpur Govt. Asad College. But a person can not claim as permanent resident by showing his academic institution or marriage. On the other hand, the respondent No.7 has shown purchased deed but it was executed on 19.11.2018 long after recruitment process. Although, the respondent No.7 claims that he got the land before that time by way of agreement for sale but it was not registered documents as per requirement of prevailing law and



thus, it is apparent that it was a created document for the purpose of justifying his permanent residence in the area before appointment.

On the other hand, the petitioner has drawn our attention to the Annexure-E to the writ petition from which it is apparent that the respondent No.7 has got the NID card from the District-Brahmanbaria. The respondent No.7 can not deny this NID card from Brahmanbaria District but he submits that subsequently the respondent No. 7 has changed the NID card which has been annexed to the affidavit in opposition as Annexure-10. But it shows that the NID card was issued on 01.06.2022 and so from those NID cards it is also apparent that he was not the permanent resident of the concerned area at the time of appointment and rather permanent resident of Brahmanbaria. Against this NID card the petitioner's plea as to resident of different area by way of marriage or as a student can not be acceptable. In the aforesaid context, the issue of permanent residency of respondent No. 7 can not be considered as disputed question of facts.

However, Mr. B. M. Elias, learned Advocate for the respondent No.7 referring to the case reported in 11BLC (AD) 152 (supra) and 22 BLC (HCD) 22 (supra) although tried to submit that in those cases the apex Court considered the candidate for Nikah Registrar as a permanent resident due to their temporary living within the claimed area.

To appreciate his submission we have gone through the cited cases, in particular, the case reported in 11 BLC (AD) 152 the apex Court held as under:

“14. That matter taken to the Court Singh, J observed:

“5. The question raised is about the meaning of the word ‘resides’ as it occurs in the second proviso. In its ordinary

meaning the word is capable of embracing permanent as also temporary residence. Referring to the word 'resides' in section 33 of the Registration Act, 1908, the Privy Council in *Sarat Chandra vs Bijoy Chand*, AIR 1937 PC 46 at page 47 observed:

"The expression 'resides' as used in Section 33, is not defined in the statute, but there is no reason for assuming that it contemplates only permanent residence and excludes temporary residence.

16. The meaning of the word 'resides' again came up for consideration before the Supreme Court, in the context of section 488 (8) of the Code of Criminal Procedure, 1898 , in *Jagir Kumar vs Jaswant Singh*, AIR 1963 SC 1521 where it was said.

"The said word has been subject to conflicting judicial opinion. In the Oxford Dictionary it is defined as: "dwell permanently or for a considerable time, to have one's settle or usual abode, to live in or at a particular place. The said meaning therefore takes in both a permanent dwelling as well as a temporary living in a place. It is, therefore, capable of different meanings, including domicile in the strictest and the most technical sense and a temporary residence. Whichever meaning is given to it, one thing is obvious and it is that it does not include a casual stay in, or a flying visit to a particular place. In short, the meaning of the word would, in the ultimate analysis, depend upon the context and the purpose of a particular statute. In this case the context and purpose of the present statute certainly do not compel the importation of the concept of domicile in its technical sense. The purpose of the statute would be better served if the word "resides" was understood to included temporary residence".

17. Now coming to the case before us and on perusal of the law mentioned above it thus appears that the legislature in its wisdom did not mandate that in order to be selected for a

licence of Nikah Registrar the incumbent is to be a permanent resident of an area. Only criteria required to be attained is that the incumbent should be a ‘resident’ of the area. It is not denied that in the application for appointment the appellant mentioned his address at Ayesha Fakirair Bari, Moulaipara, Uttar Agrabad, Chittagong within the jurisdiction of the area of Ward No. 24 Agrabad under Chittagong City Corporation and in support thereof voter’s list finally published on 7-10-1995 of Ward No. 24 containing the name of the appellant in the said address was also there.”

From the above ratio it is apparent that relating to the Nikah Registrar, the legislature required as a resident but their Lordships, in the cited case, specifically distinguished resident and permanent resident and accepted the candidate as qualified due to requirement of the term resident only. But here the authority in the recruitment process required the permanent resident and accordingly by those cited judgments, the plea of respondent No.7 does not cover to qualify him as permanent resident of the concerned area.

Again referring to the জন্ম ও মৃত্যু নিবন্ধন বিধিমালা, ২০১৮ (shortly, the Rules, 2018) Mr. B.M Elias has drawn out attention to a definition “স্থায়ীভাবে বসবাসের স্থান” which runs as follows:

“২১. স্থায়ীভাবে বসবাসের স্থান অর্থ কোন ব্যক্তির স্থায়ী ঠিকানা বা কোন ব্যক্তি যে স্থানে ন্যূনতম ৩ (তিন) বৎসর যাবৎ বসবাস করিতেছেন অথবা নদী ভাঙ্গনে বা অন্য কোন কারণে স্থায়ী ঠিকানা বিলুপ্ত হওয়ায় নূতন কোন স্থানে যে কোন সময়ের জন্য বসবাস করিতেছেন বা নূতন কোন স্থানে কোন স্থাবর সম্পত্তি ক্রয় করিয়া যে কোন সময়ের জন্য উক্ত স্থানে বসবাস করিতেছেন।  
(২) এই বিধিমালায় ব্যবহৃত যে সকল শব্দ বা অভিব্যক্তির সংজ্ঞা প্রদান করা হয় নাই, সেই সকল শব্দ বা অভিব্যক্তি আইনে যে অর্থে ব্যবহৃত হইয়াছে সেই অর্থে প্রযোজ্য হইবে।”

We are of the view that the definition aims only to understand the provisions within this Rules, 2018 and so it would be applicable for the purpose of the Rules, 2018. Moreover, the Rules were framed on 18.03.2018

while the respondents required the permanent resident by the recruitment notice published on 22.06.2015. As such, in the absence of any provision as to the retrospective effect, the Rules, 2018 can not be considered.

From the above discussions, we are led to hold that the respondent No.7 was not the permanent resident for the concerned area in order to participate or to get appointment in the post of FPI for the area, namely, Chakrada Union, Police Station/Upazila-Shibpur, District-Narsingdi in terms of the recruitment notice as well as the letter of appointment. As such, he can not continue to the said office any more.

By way of supplementary Rule, the petitioner also sought appointment in the said post in place of respondent No.7 as he stood 3<sup>rd</sup> in the recruitment process.

Mr. B. M. Elias, learned Advocate although submitted that the petitioner does not have any locus standi to file the writ petition as he has no scope to get the appointment being stood in 3<sup>rd</sup> position.

On the other hand, Mr. Hassan Ariff submits that since the candidate who stood 2<sup>nd</sup> does not show interest and so the petitioner is entitled to get the appointment and thus, he has got locus standi to file this writ petition.

We have perused the result sheet annexed as Annexure-J to the supplementary affidavit. Regarding the result sheet, the parties do not dispute and the candidate bearing roll No. 15242137 stood 2<sup>nd</sup> is not before us. In the circumstances, the respondents are directed to offer the appointment to this candidate giving certain reasonable time and on his refusal or silence (non-response), the petitioner shall be entitled to get the appointment in the said post and accordingly the respondents shall issue the

letter of appointment in favour of the petitioner. The respondents are also directed to conclude this process within 03(three) months from the date of receipt of this judgment and order. However, the salary received by the respondent No.7 shall not be refunded in lieu of his service rendered in the meantime.

In view of above, we find merit in this Rule Nisi.

**In the result, the Rule Nisi is made absolute with the above observation and directions.**

The memo No. ৮(নব-নিয়োগ)২৫/২০১৮/৬২৬ dated 11.10.2018 issued by the respondent No.5 (Annexure-d series to the writ petition) so far as it relates to appointment of Kazi Md. Ahsanullah for the post of Family Planning Inspector (FPI) for the Chakrada Union, Police Station/Upazila-Shibpur, District-Narsingdi (respondent No.7) is hereby declared to have been passed without lawful authority and is of no legal effect.

Communicate a copy of this judgment and order to the respondents at once.

*Razik Al Jalil, J*

I agree.