

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

Writ Petition No. 3183 of 2019.

In the matter of:

Applications under article 102 of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Md. Abdul Halim

..... Petitioner

-Versus-

Government of Bangladesh represented by
its Secretary, Ministry of Local
Government, Rural Development and
Cooperatives and others.

..... Respondents

With

Writ Petition No. 3184 of 2019

ASM Shahid Ullah Mozumder

..... Petitioner

-Versus-

Government of Bangladesh represented by
the Secretary, Ministry of Local
Government, Rural Development and
Cooperatives and others.

..... Respondents

Mr. A. M. Mahbub Uddin with

Mr. S. M. Kafil Uddin, Advocates

. . . . For the petitioners
in both the writ petitions.

Mr. A. F. Hassan Ariff with

Mr. Md. Oziullah, Advocates.

. . . . For the added respondent
No. 6 in both the writ petitions.

Mr. Kazi Mynul Hassan, DAG

.....For the respondent No.1 in both the writ petitions.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 12.05.2024, 14.05.2024 and
Judgment on 16.05.2024.

J. B. M. Hassan, J.

The above mentioned writ petitions have been filed separately by two candidates challenging rejection orders of their respective nomination papers for the post of Chairman in the Chhagalnaiya Upazila Parishad Election, 2019, Feni scheduled to be held on 31.03.2019. Facts and laws involved in both the writ petitions are more or less similar. Hence, both the writ petitions have been heard together and are being disposed of by this common judgment.

Writ Petition No. 3183 of 2019 has been filed by the candidate, Md. Abdul Halim who submitted his nomination paper as an independent candidate furnishing amongst others signature list of 250 voters from his Upazila as per requirement of rule 15(3)(গ)(ই ই ই ই) of the “উপ-জলা পরিষদ নির্বাচন বিধিমালা, ২০১৩” (the Rules, 2013). In random selection, the Returning Officer picked up 05(five) names from the said list out of whom they found 03(three) voters of the list bearing serial No. 136, 169 and 80 did not put their signatures. Hence, the Returning Officer opined that as an independent candidate he could not meet the requirement of rule 15(3)(গ)(ই ই ই ই) of the “উপ-জলা পরিষদ নির্বাচন বিধিমালা, ২০১৩” (the Rules, 2013). Accordingly, rejected the nomination paper on 06.03.2019 in accordance with rule 17(3)(Ga) of the Rules, 2013. Against the said order the petitioner preferred appeal No. 03 of 2019 before the appellate authority. After hearing, by the impugned order dated 10.03.2019 the appeal was dismissed affirming the decision of the Returning Officer on the reasons that the petitioner submitted list of 250

voters with fake signatures and also for non-discloser in the affidavit regarding petitioner's conviction in a criminal case. Challenging the said order rejecting nomination paper, the petitioner filed this writ petition No. 3183 of 2019 and obtained the present Rule Nisi as well as interim order of stay and direction to accept his nomination paper and allocating symbol subject to result of the Rule Nisi.

The writ petitioner, namely, ASM Shahidullah Mozumder filed writ petition No. 3184 of 2019 stating that he submitted his nomination paper for the post of Chairman of the Upazila Parishad Election, 2019, Feni as an independent candidate. During scrutiny, the Returning Officer by order dated 06.03.2019 rejected his nomination paper on the ground that he could not meet the requirement of rule 15(3) (গ)(ই ই ই ই) of the Rules, 2013 inasmuch as out of 250 voters' signature list, serial No. 175, 225, 164 and 134 did not put their signatures as detected in the random selection. Against the said order the petitioner preferred appeal No.02 of 2019 before the appellate authority and by the impugned order dated 10.03.2019, the appeal was dismissed affirming the order of the Returning Officer with the finding regarding fake signatures of the voters and also on the findings of bank loan defaulter as well as non discloser of profession as APP (Assistant Public Prosecutor). Against the said order the petitioner filed this writ petition No. 3184 of 2019 and obtained the present Rule Nisi as well as interim order of stay and direction dated 14.03.2019 to accept his nomination paper and allocating symbol subject to the result of the Rule Nisi.

Against the said interim orders of both the writ petitions, added respondent No. 6 filed Civil Miscellaneous Petitions for Leave to Appeal No. 294 of 2019 and 295 of 2019. He obtained interim order on 25.03.2019 in both the matters from the Hon'ble Judge in Chamber staying operation of the interim order of the High Court Division and also staying holding of election to be held on 31.03.2019 so far as, the same relates to the post of Chairman of the Upazila Parishad. Subsequently, the added respondent No.6 filed Civil Petitions for Leave to Appeals (CPLA) No. 1030 of 2019 and 1031 of 2019. Ultimately both the CPLAs were heard and disposed of separately on 01.04.2019 with similar observations and directions in both the matters requiring to get the Rules heard by the High Court Division expeditiously. At the same time the interim order of stay passed by the learned Judge in Chamber were extended till disposal of the Rule by the High Court Division.

While both the Rules are pending, the petitioners of both writ petitions separately filed applications in respective writ petitions for issuance of supplementary Rule stating that the Returning Officer of 5th Chhagalnaiya Upazila Parishad Election, 2019 issued a circular on 14.03.2019 declaring the added respondent No.6, namely, Mezbaul Hyder Chowdhury as elected uncontested Chairman of the Upazila Parishad, inspite of the fact that on that day the High Court Division allowed the writ petitioners to contest the election. After hearing, this Court issued supplementary Rule on 18.02.2024 in both writ petitions.

In the meantime, when the matter is taken up for hearing, the added respondent No. 6 has filed an application for staying election of 6th Upazila Parishad Election, 2024 stating that the Bangladesh Election Commission published Election Schedule on 24.04.2024 for holding election in the Chhagalnaiya Upazila Parishad inspite of pendency of the present Rules Nisi.

Mr. A. M. Mahbub Uddin, learned Advocate for the petitioners in both writ petitions submits that as independent candidates the petitioners of both the writ petitions submitted their respective nomination papers alongwith all relevant papers including signature lists of 250 voters of the concerned upazila. But the Returning Officer and the Appellate authority without following the procedure provided in rule 15 ka of the Rules, 2013 rejected their nomination papers. He further submits that in writ petition No. 3184 of 2019 the nomination paper of the petitioner was rejected assigning an additional reason that he was a defaulter which is misconception of law because the loan was home loan and it does not come within the purview of loan defaulter clause under the Rules, 2013.

The added respondent No. 6 has also filed affidavits in opposition separately in both Rules bringing more or less similar contentions and denying the facts of the writ petitions as well as supporting the findings of the impugned orders. Referring to said affidavits in opposition, Mr. A. F. Hassan Ariff, learned Advocate for the added respondent No.6 contends that the respondent No.6 was elected uncontested and since then he has been

functioning in the Upazila Parishad. After placing the application for adjournment of election schedule-2024, learned Advocate further submits that 1st meeting of the Parishad held on 23.09.2019 and so, the present election schedule has to be adjourned until expiry of tenure of the added respondent No. 6. He also contends that both the writ petitioners were found disqualified as they could not meet the requirement of rule 15(3) (গ)(ই ই ই ই) of the Election Rules, 2013 inasmuch as in the random selection the Returning Officer found that the signatures of voters were not genuine.

Mr. Kazi Mynul Hassan, learned Deputy Attorney General (DAG) has produced some papers and drawing our attention to those papers he submits that the respondent No.6 presided over the 1st meeting of the Parishad as Chairman which he can not. Although he was declared elected uncontested but gazette notification was not published and oath was not administered and that on 25.03.2019 the election was stayed by the Appellate Division. Learned DAG further submits that inspite of having no authority to hold the Chair, the added respondent No. 6 enjoyed all the facilities of the Chairman of the Upazila Parishad and so, the benefits have to be refunded to the Government exchequer.

We have gone through both the writ petitions, affidavits-in-opposition separately filed in both the Rules Nisi, supplementary affidavits and the application for adjournment of election schedule-2024 filed by the added respondent No. 6.

It is on record that schedule of 5th Chhagalnaiya Upazila Parishad Election, 2019 under Feni District, was declared on 20.02.2019. Pursuant to said schedule, the petitioners of these two writ petitions and the added respondent No.6 submitted their respective nomination papers for the post of Chairman of the Parishad. But nomination papers of present writ petitioners were rejected at the time of scrutiny on 06.03.2019. Challenging the said rejection order both the petitioners unsuccessfully preferred their respective appeals and thereafter challenging the said orders of the appellate authority, they filed these two writ petitions and obtained the present Rules Nisi.

In writ petition No.3183 of 2019, Returning Officer rejected the nomination paper of the petitioner, an independent candidate, namely, Md. Abdul Halim passing the following order:

“উপজেলা পরিষদ নির্বাচন বিধিমালা ২০১৩ এর বিধি ১৫-ক এর উপবিধি ৩ এর দফা গ এর উপদফা (ইইইই) অনুসারে প্রার্থী জনাব মোঃ আব্দুল হালিম স্বতন্ত্র হিসেবে ২৫০ জনের স্বাক্ষরযুক্ত সমর্থন সূচক তালিকা দাখিল করেন। যাচাইকালে দৈবচয়নে নির্ধারিত ৫জনের ক্রমিক ১৩৬, ২১৬, ৬২, ১৬৯ ও ৮০ এর মধ্যে সরেজমিনে তদন্তে ৬২ ও ২১৬ নং ক্রমিকে বর্ণিত ব্যক্তিদ্বয় প্রার্থীর প্রার্থীতার পক্ষে সমর্থন সূচক স্বাক্ষর করেছেন বলে জানান। ক্রমিক নং ১৩৬, ১৬৯ ও ৮০ বর্ণিত ভোটারগণ স্বাক্ষর করেনাই জানান। এমতাবস্থায় উপজেলা পরিষদ নির্বাচন বিধিমালা ২০১৩ এর ১৭ এর উপবিধি ৩(গ) অনুসারে মনোনয়ন পত্রটি বাতিল করা হলো।”

The appellate authority also observed that voters' signature list serial No. 136 and 169 appeared in person before the appellate authority and informed that they did not put their signatures in the signatures' list attached with the nomination paper. The appellate authority also observed that the writ petitioner as a candidate did not disclose the conviction and sentence passed on 04.05.2016 by the Metropolitan Sessions Judge, 5th Court, Dhaka in Session Case No. 4874 of 2009. Learned Advocate for the petitioner

could not satisfy this Court regarding genuineness of list containing signatures of voters and the conviction as well as non disclosure thereof which are also the requirements for the candidature. In this regard, the relevant laws under the Rules, 2013 run as follows:

“১৫। মনোনয়ন।—

(১)

(২)

(৩)(ক).(খ).

১৫(৩) (গ)-নিম্নবর্ণিত কাগজপত্রসহ দাখিল করিতে হইবে, যথা:-

(অ).(ই ই ই)।

(ইইইই) স্বতন্ত্র চেয়ারম্যান বা ভাইস চেয়ারম্যান প্রার্থীর প্রার্থিতার জন্য সংশ্লিষ্ট উপজেলার ২৫০ (দুইশত পঞ্চাশ) জন ভোটারের স্বাক্ষরযুক্ত তালিকা:

তবে শর্ত থাকে যে, কোন স্বতন্ত্র চেয়ারম্যান বা ভাইস চেয়ারম্যান প্রার্থী চেয়ারম্যান বা ভাইস চেয়ারম্যান পদে ইতিপূর্বে নির্বাচিত হইয়া থাকিলে তাঁহার জন্য ভোটারের স্বাক্ষরযুক্ত তালিকা দাখিল করিবার প্রয়োজন হইবে না; এবং];

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(ঈ) (২) বর্তমানে তিনি কোন ফৌজদারী মামলায় অভিযুক্ত আছেন কিনা;

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১৭। মনোনয়নপত্র বাছাই।—

(১)

(৩) রিটার্নিং অফিসার স্বীয় উদ্যোগে, অথবা উপ-বিধি (১) এ উল্লিখিত কোন ব্যক্তি কর্তৃক উপ-বিধি

(২) এর অধীন উত্থাপিত আপত্তির প্রেক্ষিতে, তদবিবেচনায় সংশ্লিষ্ট তদন্ত পরিচালনা করিতে পারিবেন

এবং কোন মনোনয়নপত্র বাতিল করিতে পারিবেন, যদি তিনি সন্তুষ্ট হন যে,

(ক)-(খ)

(গ) বিধি ১৫ বা ক্ষেত্রমত, বিধি ১৬ এর কোন বিধান পালন করা হয় নাই; বা

.”

In view of above legal provisions, we find that the nomination paper of Md. Abdul Halim, an independent candidate, writ petitioner in writ petition No. 3183 of 2019 was rightly rejected by the Returning Officer and the appellate authority as well. Therefore, the Rule Nisi issued in writ petition No. 3183 of 2019 fails.

We have also gone through the impugned order of the Returning Officer dated 06.03.2019 rejecting nomination paper of petitioner, namely, ASM Shahidullah Mozumder which runs as follows:

“উপজেলা পরিষদ আইন ১৯৯৮ এর ধারা ৮(২) (ঞ) অনুযায়ী প্রার্থী জনাব এএসএম সহিদতউল্যাহ মজুমদার বাংলাদেশ ব্যাংক এর সূত্র নং সিআইবি ৫(১)/২০১৯-৮৫২ মূলে সাউথইস্ট ব্যাংক লিঃ এর কর্পোরেট শাখা, ঢাকায় ব্যক্তি হিসেবে ঋন খেলাপী হয়েছেন। এমতাবস্থায় উক্ত ব্যাংক থেকে গৃহীত ঋন মেয়াদাভীর্ণ থাকায় উপজেলা পরিষদ আইন ১৯৯৮ এর ধারা ৮(২) (ঞ) অনুযায়ী জনাব এএসএম সহিদ উল্যাহ মজুমদার উপজেলা পরিষদের চেয়ারম্যান হবার যোগ্য না হওয়ায় উপজেলা পরিষদ নির্বাচন বিধিমালা ২০১৩ এর বিধি ১৭(৩) (ক) অনুসারে মনোনয়ন পত্রটি বাতিল করা হলো।
 (২) উপজেলা পরিষদ নির্বাচন বিধিমালা-২০১৩ এর বিধি ১৫ক এর উপবিধি ৩ এর দফা গ এর উপদফা (ই ই ই ই) অনুসারে এ, এস, এম সহিদ উল্যাহ মজুমদার স্বস্ত্র হিসেবে ২৫০ জনের স্বাক্ষরযুক্ত সমর্থন সূচক তালিকা দাখিল করেন। যাচাইকালে দৈবচয়নে নির্ধারিত ৫ জনের ক্রমিক ১৭৫, ২২৫, ১৩৪, ৯৭ ও ১৬৪ এর মধ্যে সরেজমিনে যাচাইয়ে কেবল ৯৭নং ক্রমিক উল্লিখিত ব্যক্তি সমর্থন সূচক স্বাক্ষরের কথা জানায়। অন্য ক্রমিক নং ১৭৫, ২২৫, ১৬৪ ও ১৩৪ স্বাক্ষর দেয় নাই বলে জানান। এমতাবস্থায় উপজেলা পরিষদ নির্বাচন বিধিমালা ২০১৩ এর বিধি ১৭ এর উপবিধি ৩ (গ) অনুসারে মনোনয়ন পত্রটি বাতিল করা হলো।”

From the above, it appears that the Returning Officer rejected the nomination paper on two counts. Firstly, he was Bank defaulter availing credit facility from Southeast Bank Limited. Secondly, he could not meet the requirement of rule 15(3) (গ) (ই ই ই ই) of the Rules, 2013 inasmuch as out of 250 signatures of voters for independent candidate, the Returning Officer found that serials No. 175, 225, 164 and 134 did not put their signature as found in random selection. The appellate authority affirmed the said order but he has not exercised his authority independently regarding findings of the Returning Officer on consideration of materials on record. However, the appellate authority added a 3rd reason to the effect that petitioner, Mozumder was APP (Assistant Public Prosecutor) but he did not disclose it in the Affidavit.

Now let us see whether the reasons assigned by both the appellate authority and the Returning Officer were in accordance with law. In this regard, we have examined section ৮(২)(এ) of the Act, 1998 which runs as follows:

“৮। চেয়ারম্যান ও ভাইস চেয়ারম্যানের যোগ্যতা ও অযোগ্যতা:

(১)

(২) কোন ব্যক্তি চেয়ারম্যান ও ভাইস চেয়ারম্যান নির্বাচিত হইবার এবং থাকিবার যোগ্য হইবেন না, যদি তিনি-

(এ) মনোনয়নপত্র জমা দেওয়ার তারিখে কোন ব্যাংক বা আর্থিক প্রতিষ্ঠান হইতে গৃহীত কোন ঋণ মেয়াদোত্তীর্ণ অবস্থায় অনাদায়ী রাখেন:

তবে শর্ত থাকে যে, কোন ব্যাংক বা আর্থিক প্রতিষ্ঠান হইতে গৃহীত নিজস্ব বসবাসের নির্মিত গৃহ-নির্মাণ অথবা ক্ষুদ্র কৃষি ঋণ ইহার আওতাভুক্ত হইবে না;”

(Underlined)

On perusal of the above provision, it appears that the disqualification provision has exempted the defaulter relating to home loan availed for borrower's own residence. From the sanction letter (Annexure-D to the writ petition), we find that the petitioner, ASM Shahidullah Mozumder and his wife availed the credit facilities amounting to Tk. 45 lac for apartment purchase. Moreover, it has been specifically described as the home loan. Thus, the petitioner was found defaulter in connection with a home loan for his residence. Therefore, regarding such loan, he can not be treated as disqualified candidate within the purview of proviso to section ৮(২)(এ) of the Act, 1998. As such, the finding of the appellate authority and the Returning Officer, was misconceived.

Secondly, we find that the Returning Officer in the random selection found that voters signatories serial No.134, 164, 175 and 225 did not put their signatures for the petitioner as his supporter as an independent

candidate. Rule 15Ka provides the following procedure to come to a decision to identify genuine signatures of the voters for the independent candidate which runs as flows:

“১৫ ক। স্বতন্ত্র চেয়ারম্যান বা ভাইস চেয়ারম্যান প্রার্থীর ভোটারের স্বাক্ষরযুক্ত তালিকা যাচাই পদ্ধতি।-

(১) স্বতন্ত্র চেয়ারম্যান বা ভাইস চেয়ারম্যান প্রার্থী কর্তৃক বিধি ১৫ এর উপ-বিধি (৩) এর দফা (গ) এর উপ-দফা (ইইইই) এর বিধান অনুসারে দাখিলকৃত নির্ধারিত সংখ্যক ভোটারের স্বাক্ষর ও তথ্যাদি রিটার্নিং অফিসার বা রিটার্নিং অফিসারের নিকট হইতে ক্ষমতাপ্রাপ্ত কর্মকর্তা সরেজমিনে যাচাইয়ের প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবেন।

(২) রিটার্নিং অফিসার বিধি ১৫ এর উপ-বিধি (৩) এর দফা (গ) এর উপ-দফা (ইইইই) এর অধীন প্রাপ্ত তালিকায় নির্ধারিত সংখ্যা হই-ত কম সংখ্যক ভোটারের স্বাক্ষর থাকিলে অথবা তালিকার কোন একটি ক্রমিকের তথ্যের গরমিল থাকিলে সংশ্লিষ্ট মনোনয়নপত্র বাতিল করিবেন।

(৩) রিটার্নিং অফিসার বিধি ১৫ এর উপ-বিধি (৩) এর দফা (প) এর উপ-দফা (ইইই) এর অধীন প্রাপ্ত তালিকাসহ প্রার্থীর নাম ফ্যাক্স, ই-মেইল কিংবা অন্য কোন মাধ্যমে নির্ধারিত সময়ের মধ্যে কমিশনের মনোনীত কর্মকর্তাকে অবহিত করিবেন।

(৪) উপ-বিধি (৩) এর অধীন প্রার্থীর নাম অবগত হইবার পর নির্বাচন কমিশনের মনোনীত কর্মকর্তা দৈবচয়নের ভিত্তিতে কম্পিউটার প্রোগ্রামের মাধ্যমে প্রত্যেক স্বতন্ত্র প্রার্থীর দাখিলকৃত স্বাক্ষর তালিকার ৫ (পাঁচ) টি সংখ্যা চিহ্নিত করিবেন যাহা ক্রমিক ১ (এক) হইতে ২৫০ (দুইশত পঞ্চাশ) এর মধ্যে হইতে হইবে এবং উহা রিটার্নিং অফিসারকে ফ্যাক্স, ই-মেইল বা অন্য কোন মাধ্যমে অবহিত করিবেন।

(৫) বিধি ১৫ এর উপ-বিধি (৩) এর দফা (গ) এর উপ-দফা (ইইইই) এর অধীন স্বাক্ষরযুক্ত তালিকায় চেয়ারম্যান বা ভাইস চেয়ারম্যান পদের জন্য ২৫০ (দুইশত পঞ্চাশ) এর অধিক নাম ও স্বাক্ষর অন্তর্ভুক্ত হইলে, যে ক্রমিক হইতে এই অধিক সংখ্যার শুরু হইয়াছে উহা দৈবচয়নের অন্তর্ভুক্ত হইবে না।

(৬) উপ-বিধি (৪) এর অধীন চিহ্নিত ৫ (পাঁচ) টি সংখ্যার বিপরীতে উল্লিখিত তথ্যাদি রিটার্নিং অফিসার সরেজমিনে তদন্ত করিবেন বা করাইবেন এবং তদন্ত কর্মকর্তা প্রতিটি সংখ্যার বিপরীতে একটি লিখিত প্রতিবেদন প্রস্তুত করিবেন।

(৭) উপ-বিধি (৬) এর অধীন তদন্তের ফলাফলের উপর ক্ষেত্রমত, সংশ্লিষ্ট এলাকার একজন ভোটারের প্রত্যয়ন অথবা যাচাইকৃত ভোটারের স্বাক্ষর কিংবা টিপসহি থাকিবে এবং উহা সংশ্লিষ্ট এলাকার অপর একজন ভোটার কর্তৃক প্রতিস্বাক্ষরকৃত বা টিপসহিত হইবে।

(৮) এই বিধির অধীন মনোনয়নপত্র বাতিল করা হইলে রিটার্নিং অফিসার তাহার সিদ্ধান্ত প্রত্যয়ন করিবেন এবং বাতিলের কারণ লিপিবদ্ধ করিবেন।”

(Underlined)

Here the signatories-voters do not deny their signatures. The petitioner raised specific objection in appeal regarding finding of Returning Officer as to determination of genuineness of selected signatories and prayed to make an enquiry in this regard. But without taking any step, the appellate authority just affirmed the finding of the Returning Officer. Further, we find that without following the procedure laid down in rule 15Ka of the Rules, 2013, the appellate authority and the Returning Officer came to the erroneous findings that the signatures of the voters were not genuine. Thus, their findings to that effect are not based on record and also not in accordance with law.

Thirdly, we find that the petitioner in his affidavit of the nomination paper (Annexure-A to the writ petition) specially mentioned his profession as a “regular lawyer”. Moreover, APP is not a full time profession of profit of the Republic to disqualify the petitioner under section 8(2) (ঙ) of the Act, 1998. In the above context, we are led to hold that the rejection orders of nomination paper of ASM Shahidullah Mozumder by the Returning Officer as well as the Appellate authority were not passed in accordance with law and as such, the same are liable to be declared to be without lawful authority.

In view of above findings, we hold that in the 5th Chhagalnaiya Upazila Parishad Election, 2019 the petitioner of Writ Petition No.3184 of 2019, namely, ASM Shahidullah Mozunder stands as valid candidate along with the added respondent No.6.

From the materials on record, it appears that three candidates submitted nomination papers for the post of Chairman of the Parishad. Out of them nomination papers of two candidates (petitioners) were being rejected, they filed these two writ petitions. On the other hand, the remaining candidate, namely, Mazbaul Hyder Chowdhury (respondent No. 6 in both writ petition) was declared elected uncontested by the notification dated 14.03.2019 issued by the Returning Officer considering him sole candidate. The said memo has also been challenged under supplementary Rule of both the writ petitions on the ground and submission that the writ petitioners obtained interim order of stay and direction on 14.03.2019 to accept their respective nomination papers. As such, on the day of declaring elected uncontested on 14.03.2019, there were two other candidates in view of interim order of the High Court Division and so, Mr. Chowdhury was not a sole candidate on 14.03.2019.

In the circumstances, question arises regarding propriety of the said notification declaring the respondent No. 6 as uncontested elected Chairman. Rule 24(2) of the Rules, 2013 incorporates the following provision for uncontested elected declaration which runs as follows:

“২৪। বিনা প্রতিদ্বন্দ্বিতায় নির্বাচন।- (১) যদি চেয়ারম্যান বা ভাইস চেয়ারম্যান নির্বাচনে বিধি ১৭ এর অধীন বাছাইয়ের পর মনোনীত প্রার্থী অথবা বিধি ২০ এর অধীন-

প্রার্থিতা প্রত্যাহারের পর প্রতিদ্বন্দ্বী প্রার্থীর সংখ্যা কেবল একজন হয়, তাহা হইলে রিটার্নিং অফিসার বিধি ১৩ এর উপ-বিধি (১) এর দফা (গ) এর অধীন প্রার্থিতা প্রত্যাহারের নির্ধারিত তারিখের পর, গণবিজ্ঞপ্তি দ্বারা উক্ত প্রার্থীকে নির্বাচিত বলিয়া ঘোষণা করিবেন এবং কমিশনের নিকট ফরম ২২[ঙ] তে একটি রিটার্ন দাখিল করিবেন।

(২)

৩। কমিশন নির্বাচিত প্রার্থীর নাম সরকারি গে-জ-ট প্রকাশ করি-বা।”

By the general notification dated 14.03.2019, the added respondent No. 6 claims that he was declared elected uncontested by the Returning Officer inasmuch as there was no contesting candidate due to rejection of nomination papers of the petitioners of these two writ petitioners. We find that as per election schedule the date of withdrawal of nomination paper was on 13.03.2019. Respondent No. 6 was declared elected uncontested on 14.03.2019. But in both the writ petitions, this Court passed interim order at the time of issuance of the Rule on the very day, 14.03.2019 directing to accept nomination paper of the petitioners. Thus, on 14.03.2019 by virtue of the interim order of direction passed in these Rules, there were three candidates and so irrespective of the fact that the Returning Officer had no knowledge about the interim order, as per law and in view of order of this Court passed on 14.03.2019, there being three candidates, the notification of declaration of uncontested elected Chairman was unlawful. Although, the interim order was subject to result of the Rule but we find that the petitioner, namely, ASM Shahidullah Mozumder's nomination paper was valid and so there is no scope to declare the respondent No.6 as uncontested elected Chairman. As such, supplementary Rule obtained by the petitioner, ASM Shahidullah Mozumder in writ petition No. 3184 of 2019 finds merit. Resultantly, the notification dated 14.03.2019 issued by the Returning

Officer declaring the added respondent No. 6 as elected uncontested Chairman was without lawful authority and of no legal effect.

Further, we find that the added respondent No. 6 filed CMPs No. 294 of 2019 and 295 of 2019 before the Appellate Division and obtained interim order before the learned Judge-in-Chamber wherein the interim order of High Court Division was stayed on 25.03.2019 i.e 11 days after the order passed by the High Court Division. The Appellate Division also stayed the election 2019 of Chhagalnaiya Upazila Parishad so far as it relates to the post of Chairman of the Parishad. Therefore, the added respondent No. 6 did not have any scope to become uncontested elected Chairman in that particular scenario.

Moreover, to assume the office as Chairman of the Upazila Parishad, after having the result of election, the declared elected candidate needs gazette publication and taking oath of office in accordance with rule 24(3) of the Rules, 2013 and sections 9 and 18 of the Act, 1998 respectively. It is admitted position from both the learned Advocates for the added respondent No. 6 and the learned DAG who obtained all relevant papers from the concerned authority that the name of added respondent No.6 as elected Chairman of the Upazila Parishad was never published in the gazette and he never took oath as Chairman by the Election, 2019.

From the papers produced by the learned DAG, surprisingly we find that the added respondent No. 6 has been holding the chair of Upazila Chairman and functioning so far. This fact has not been denied by the

respondent No. 6. Rather, from the supplementary affidavit filed by the respondent No. 6, we have also seen the minutes of 1st meeting held on 23.09.2019 wherein the Parishad was constituted by two other Vice-Chairmen and other ex-officio members and the added respondent No. 6 was presiding the meeting as Chairman of the Upazila Parishad. Learned Advocate for the added respondent No.6 could not satisfy this Court about his position although Mr. Ariff submits that he was the Chairman of earlier tenure for the said Upazila Parishad and that in the absence of new Chairman respondent No. 6 was entitled to function for the Parishad. For the sake of argument, if we consider that the respondent No.6 was rightly elected uncontested. But without any gazette notification and administration of oath, he had full knowledge that he was not fit to hold the post of Chairman. We are utterly surprised how a person who is not a Chairman, can function for the Parishad for the last 5 years. It appears that section 6 of the Act, 1998 incorporates provision how the Parishad would be constituted. In particular, sub-section (7) incorporates the following provision:

“৬(৭) কোন পরিষদের চেয়ারম্যান ও দুইজন ভাইস চেয়ারম্যান এই তিনটি পদের মধ্যে যে কোন একটি পদসহ শতকরা ৭৫ ভাগ সদস্যের নির্বাচন অনুষ্ঠিত হইলে এবং নির্বাচিত সদস্যগণের নাম সরকারি গেজেটে প্রকাশিত হইলে, পরিষদ, এই আইনের অন্যান্য বিধান সাপেক্ষে, যথাযথভাবে গঠিত হইয়াছে বলিয়া বিবেচিত হইবে;”

From the above discussions and materials on record there is no Chairman in the Upazila Parishad. However, facts remain that two other Vice Chairmen were elected; their results were also gazetted and they took oath. There are also other ex-officio members for constituting the Parishad in accordance with section 6 of the Act, 1998 only except for the Chairman.

Since 75% of the posts of the Parishad have already been found, the Parishad was constituted as per section 6(7) of the Act, 1998 even in the absence of Chairman and they hold the 1st meeting on 23.09.2019. On such event, the tenure of earlier Parishad expires on 22.09.2019. Therefore, although the added respondent No. 6 was Chairman for the earlier tenure i.e 2014-2019 but that tenure expired in accordance with section 7 of the Act, 1998 i.e before 1st meeting of the newly constituted Parishad.

Today learned DAG has also produced an office memo bearing No.46.20.3014.000.14.014.24-289 dated 16.05.2024 sent by the Upazila Nirbahi Officer, Chhagalnaiya Upazila, Feni by which it appears that during the above period (2019-2024) the added respondent No. 6 as Chairman of the Chhagalnaiya Upazila Parishad, Feni enjoyed different facilities worth of Tk. 33,26,619/-. The said office memo is quoted herein below:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
উপজেলা নির্বাহী অফিসারের কার্যালয়
ছাগলনাইয়া, ফেনী।

www.Chhagalanaiya.feni.gov.bd

স্মারক নং-৪৬.২০.৩০১৪.০০০.১৪.০১৪.২৪-২৮৯

তারিখ: ১৬-০৫-২০২৪

বিষয়: ৫ম উপজেলা পরিষদ গঠনের প্রথম সভা হতে জনাব মেজবাউল হায়দার চৌধুরী, চেয়ারম্যান, উপজেলা পরিষদ, ছাগলনাইয়া, ফেনী এর সম্মানী ভাতা ও অন্যান্য ভাতার হিসাবের তথ্যাদি প্রদান প্রসঙ্গে।

উপরোক্ত বিষয়ের আলোকে ৫ম উপজেলা পরিষদ গঠনের প্রথম সভা হতে জনাব মেজবাউল হায়দার চৌধুরী, চেয়ারম্যান, উপজেলা পরিষদ, ছাগলনাইয়া, ফেনী এর সম্মানী ভাতা ও অন্যান্য ভাতার হিসাবের তথ্যাদি প্রেরণ করা হলো।

অর্থ বছর	সম্মানী ভাতা	ভ্রমণ ব্যয়	জীপ গাড়ীর জ্বালানী ও অন্যান্য ব্যয়	সর্বমোট টাকার পরিমাণ
সেপ্টেম্বর ২০১৯-২০২০	৪০০০০০.০০	৬৪৩৭৫.০০	১৪০৪২৪.০০	
২০২০-২০২১	৪৮০০০০.০০	৭৮১২৫.০০	১৭৯৯৯৩.০০	
২০২১-২০২২	৪৮০০০০.০০	৬১৮৭৫.০০	১৪৯২১০.০০	

২০২২-২০২৩	৪৮০০০০.০০	৬৫২৫০.০০	২৪০৬৬৮.০০	
২০২৩-এপ্রিল ২০২৪	৪০০০০০.০০	৪১৮৭৫.০০	৬৪৮২৪.০০	
মোট	২২,৪০,০০০.০০	৩,১১,৫০০.০০	৭,৭৫,১১৯.০০	৩৩,২৬,৬১৯.০০

(সাইফুল ইসলাম কমল)
উপজেলা নির্বাহী অফিসার
ছাগলনাইয়া, ফেনী”

Though, transport fuel is included in the expenditures, besides added respondent No. 6 enjoyed full time transport (i.e Driver and Transport) and other facilities although those have not been reflected in this memo. But he is to refund all these benefits in terms of money inasmuch as he had no scope to hold the office of the Chairman as discussed above and knowing fully about his position, he fraudulently functioned for the Upazila Parishad and misappropriated the state fund and power. The concerned UNO and the Deputy Commissioner for the relevant time (2019) can not avoid their responsibility in this regard and so, an enquiry has to be conducted to identify any negligence or mal intension on the part of those concerned officers. Even, it can be looked into by the Anti Corruption Commission (ACC).

In order to justify the function of the respondent No.6, Mr. Hassan Ariff submits that since the added respondent No. 6 was Chairman for the previous term i.e 2014-2019, section 7 of the Act, 1998 allows him to function until the next Chairman assumes the office in accordance with section 7 of the Act, 1998. To consider his submission we have examined section 7 which runs as follows:

“৭। পরিষদের মেয়াদ: ধারা ৫৩ এর বিধান সাপেক্ষে, পরিষদের মেয়াদ হইবে উহার প্রথম সভার তারিখ হইতে পাঁচ বৎসর:

তবে শর্ত থাকে যে, উক্ত মেয়াদ শেষ হওয়া সত্ত্বেও নির্বাচিত নূতন পরিষদ উহার প্রথম সভায় মিলিত না হওয়া পর্যন্ত পরিষদ কার্য চালাইয়া যাইবে।”

As we discussed above and find that the Parishad was duly constituted by more than 75% of the members except for the Chairman and so, this Parishad is allowed to function in accordance with section 6(7) of the Act, 1998. The Chairman of the previous Parishad had no scope to function in the newly constituted Parishad under section 7 of the Act, 1998. As such, we do not find any basis in the submission of the learned Advocate for the added respondent No.6.

Therefore, an appropriate action has to be taken against this added respondent No. 6 by the concerned ministry, the Anti Corruption Commission and all benefits in terms of money shall be realized from him. The added respondent No.6 is further directed to refund all the benefits to the Government exchequer to be claimed from him within 03(three) months from the date of making the claim.

Now next issue arises in the context of publication of new schedule on 24.04.2024 for holding election of the Chhagalnaiya Upazila Parishad Election, 2024 fixing a polling date on 05.06.2024. Learned Advocate for the petitioners and the respondent No. 6 jointly submit that since earlier election could not be held as per previous schedule, the said election has to be conducted and there is no scope to publish new schedule. On the other hand, learned DAG submits that by the election, 2019 the Parishad was

constituted and since the tenure, in the meantime, at the stage of expiry having less than 180 days, the new schedule, 2024 is quite in accordance with section 17 (Ga) of the Act, 1998 and there is no scope to conduct election by the earlier schedule, 2019 due to prevailing situation under section 16 of the Act, 1998. To appreciate their submissions, we have gone through the relevant provisions of sections 16(Ka) and 17(Ga) of the Act, 1998 which run as follows.

১৬। আকস্মিক পদশূন্যতা পূরণ: পরিষদের মেয়াদ শেষ হইবার তারিখের-

- (ক) একশত আশি দিন বা তদপেক্ষা বেশী সময় পূর্বে চেয়ারম্যান এবং ভাইস চেয়ারম্যানের পদ শূন্য হইলে ; বা
 (খ) একশত বিশ দিন বা তদপেক্ষা বেশী সময় পূর্বে কোন মহিলা সদস্যের পদ শূন্য হইলে, উক্ত পদটি শূন্য হওয়ার নব্বই দিনের মধ্যে বিধি অনুযায়ী অনুষ্ঠিত নির্বাচনের মাধ্যমে উক্ত শূন্য পদ পূরণ করিতে হইবে, এবং যিনি উক্ত পদে নির্বাচিত হইবেন তিনি পরিষদের অবশিষ্ট মেয়াদের জন্য উক্ত পদে বহাল থাকিবেন।

“১৭। নির্বাচন অনুষ্ঠান-এর সময়ঃ নিম্নবর্ণিত সময়ে [চেয়ারম্যান, ভাইস চেয়ারম্যান] ও মহিলা সদস্যগণের নির্বাচন অনুষ্ঠিত হইবে, যথাঃ-

(ক)-(খ)

(গ) পরিষদের মেয়াদ শেষ হওয়ার ক্ষেত্রে, উক্ত মেয়াদ শেষ হইবার তারিখের পূর্ববর্তী [একশত আশি] দিনের মধ্যে; এবং

(ঘ)”

We held earlier that the Parishad was constituted by the election, 2019 in accordance with section 6(7) of the Act, 1998 having 75% of the members of the Parishad although Chairman was not elected. From the record, we also find that the 1st meeting was held on 23.09.2019. Mr. A. M. Mahabub Uddin submits that since the meeting was chaired by the added respondent No. 6 who was not elected Chairman, it was not a meeting in the eye of law. But fact remains that there were other members and two Vice Chairmen and so duly constituted Parishad started their function on 23.09.2019. Thereby, the previous tenure shall be expired on 22.09.2024 in accordance with section 7

of the Act, 1998. In that context from today since the Rule is going to be disposed of, the force of order of the Appellate Division staying election expires today. Thus, there remains less than 180 days to reach to the expiry date on 22.09.2024. In such circumstances, sections 16 (Ka) and 17(Ga) of the Act, 1998 come into play. In other words, post of Chairman can not be filled up, if it occurs vacant within 180 days of expiry of the running term. And fresh election for the next term of whole Parishad, can be conducted within 180 days ahead of expiry of the tenure of the Parishad.

In such circumstances, although at the moment the petitioner of writ petition No. 3184 of 2019 is found eligible candidate along with added respondent No. 6. But there is no scope to hold election by the earlier schedule, 2019 for the post of Chairman due to section 16 (Ka) of the Act, 1998 inasmuch as leaving the post of Chairman, the other members of the Parishad have been functioning. They are allowed to function until 22.09.2024 and now remains less than 180 days. Although learned Advocate for the added respondent No. 6 submits that during existence of earlier tenure the new election schedule can not be declared but we find legal sanction for declaring election schedule under section 17(Ga) of the Act, 1998 that within 180 days before expiry of the earlier tenure, the election schedule can be published and election can be held for the next tenure. Therefore, we are not inclined to interfere with the new schedule declared on 24.04.2024 for holding election to constitute the Parishad for the next term.

Regard being had to the above discussions-

- (i) The applications filed by the added respondent No. 6 in both the Rules for staying election schedule to be held on 05.06.2024 are hereby rejected.
- (ii) The Rule Nisi issued in writ petition No. 3183 of 2019 is discharged and the supplementary Rule issued in writ petition No. 3183 of 2019 is disposed of.
- (iii) The Rule Nisi issued in writ petition No. 3184 of 2019 is disposed of with the observations and directions mentioned in this judgment. However, the supplementary Rule issued in writ petition No. 3184 of 2019 is made absolute.
- (iv) The public notification bearing memo No. 17.10.3000.000.40.001.19-107 dated 14.03.2019 issued by the Returning Officer, Chhagalniya Upazila Parishad Election, 2019, Feni declaring the respondent No. 6 as uncontested elected chairman of the Parishad is hereby declared to be without lawful authority and is of no legal effect.
- (v) The added respondent No. 6 had no authority to function for the term 2019-2024 as Chairman of the Chhagalnaiya Upazila Parishad by the election, 2019 or in any other manner. However, the actions, functions and decisions taken by the Upazila Parishad wherein he was also party shall not be invalid only because of his presence as purported Chairman.
- (vi) The Secretary, Ministry of Local Government, Rural Development and Cooperatives is directed to assess the expenditures and costs incurred for the respondent No. 6 as alleged Chairman of the Chhagalnaiya Upazila Parishad during the tenure 2019-2024 (around five years) and shall make demand from him accordingly within

3(three) months from the date of receipt of this judgment and order.

- (vii) The added respondent No. 6 is also directed to refund all benefits taken in the meantime during this period (around five years) as alleged Chairman of the Chhagalnaiya Upazila Parishad within three months from the date of making the demand to be made by the Ministry of Local Government, Rural Development and Cooperatives failing which the Deputy Commissioner, Feni is directed to realize the same under the PDR Act.
- (viii) The Secretary, Ministry of Public Administration shall constitute a 3 (three) member enquiry committee to identify the responsible Officers in allowing the respondent No. 6, namely, Mezbaul Hayder Chowdhury to function as Chairman of the Chhagalnaiya Upazila Parishad, Feni for the term 2019-2024.
- (ix) The Anti Corruption Commission shall also enquire into the matter and take necessary action, if necessary.

However, there will be no order as to costs.

Communicate a copy of the judgment and order to the respondents No. 1-5, The Chairman, Anti Corruption Commission and the Secretary, Ministry of Public Administration at once for their information and necessary action.

Mr. Justice Razik Al Jalil, J
I agree.