

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

***WRIT PETITION NO. 9593 of 2020***  
***with***  
***WRIT PETITION NO. 9886 of 2020***

IN THE MATTER OF:

Applications under Article 102 of the  
Constitution of the People's Republic of  
Bangladesh

And

IN THE MATTER OF:

***Harun-Or-Rashid Howlader and others ((in  
Writ Petition No.9593 of 2020)***

***With***

***Md. Minhaduzzaman Leeton (in Writ Petition  
No 9886 of 2020)***

***- Petitioners***

-VS-

***Government of Peoples Republic of  
Bangladesh, represented by the Secretary,  
Cabinet Division, Bangladesh Secretariat,  
Ramna, Dhaka and others***

***.....Respondents in writ petition Nos.  
9593 and 9886 both of 2020.***

And

Mr. Ajmalul Hossain, K.C., Senior Advocate  
Mr. Hassan M.S. Azim, Advocate with  
Mr. Kamal Hossain Meahzi, Advocate with  
Mr. Ashfaqur Rahman, Advocate with  
Mr. Md. Hasan Uz Zaman, Advocate with  
Mr. Sumit Kumar Sarker, Advocate with  
Mr. Mohammad Miftaul Alam, Advocate with  
Mr. Shahriar Shahid Saad, Advocate and  
Mr. Md. Julfikar Ali, Advocate

.... For the Petitioner in Writ Petition No. 9593 of 2020.

Mr. Md. Minhaduzzaman Leeton, Advocate

Petitioner in person in Writ  
Petition No. 9886 of 2020

Mr. Md. Ashraful Alam (Nobel), Advocate

..... For the respondent No.2 in  
Writ Petition No.9593 of 2020

Mr. Sk. Reajul Hoque, Advocate with

Ms. Shishirkona, Advocate

.....For the respondent No.4 in both the writ petitions.

Mr. Mustafa Khan, Advocate

For the respondent No.6 in  
writ petition No.9593 of 2020.

Mr. Mohammad Mehedi Hasan Chowdhury, Additional  
Attorney General, with

Mr. Samarendra Nath Biswas, D.A.G. with

Mr. Md. Abul Kalam Khan (Daud), A.A.G. with

Mr. Md. Modersher Ali Khan (Dipu), A.A.G. with

Mr. Md. Taufiq Sajawar (Partho), A.A.G.

...For the Respondents-government  
in both the writ petitions.

***Heard on: 15.06.2022, 24.08.2022, 26.10.2022  
02.11.2022, 01.12.2022, 15.01.2023***

***And Judgment on: 29.03.2023.***

**Present:**

*Mrs. Justice Farah Mahbub.*

*and*

*Mr. Justice Ahmed Sohel*

**Farah Mahbub, J:**

Since common question of laws and facts are involved in both the writ petitions as such, those have been heard together and are being disposed of by this single judgment.

On the assertion of making Upazilla Nirbahi Officer (in short, UNO) as the Chief Executive Officer (in short, the CEO) of the Upazilla Parishad, who shall provide secretarial assistance to the said Parishad vide Section 33(1) of the Upazilla Parishad Ain, 1998 (as amended vide Act No.21 of 2011) (in short, the Ain, 1998) along with powers to execute the respective decisions of the Parishad including the powers to deal with financial matters and also, to perform all other functions as prescribed under the respective Rules so have been framed thereunder as the CEO of the Parishad vide Section 33(2) of the said Ain, the petitioners who are the elected representatives of different Upazilla Parishads of Bangladesh as being the Chairman and Vice Chairman respectively being aggrieved

have challenged the vires of Section 33 in its entirety (as amended vide Act No.21 of 2011) published in gazette on 01.12.2011 [Annexure-A1 to Writ Petition No. 9593 of 2020] on the count that said provision is *ultra vires* Articles 7, 11, 27, 31, 59 and 60 of the Constitution of the People's Republic of Bangladesh (in short, the Constitution) as well as is violative of the overall scheme of the Upazilla Parishad Ain, 1998 (Act No. 24 of 1998); as such, void in terms of Article 7(2) of the Constitution.

The petitioners have also challenged the use of the terminology "উপজেলা প্রশাসন" by the UNO instead of "উপজেলা পরিষদ" while making official correspondences as well as in the official functions (Annexure-G series to Writ Petition No. 9593 of 2020) hence, is violative of Articles 7(1) and 59(1) of the Constitution.

The petitioners have further challenged formation of different committees in connection with the activities of the respective Upazilla Parishad as being violative of Sections 4 and 29 of the Ain of 1998 as well as Articles 7(1) and 59(1) of the Constitution and also, SRO No.স্বাসবি/উপ-২/সি-৪/২০০৯/১৪২২ dated 17.06.2010 issued by the Ministry of Local Government, Rural Development and Co-operatives (in short, LGRD) (Annexure-B to Writ Petition No. 9593 of 2020) and Memo No.04.00.0000.512.82.048.14.402 dated 14.10.2015 (Annexure-D to Writ Petition No.9593 of 2020) and thereby causing obstruction to the elected representatives of the Upazilla Parishads in performing their respective functions by nominating the UNOs as Chairman and making the Upazilla Chairmen as Advisors to the said committees of the Upazilla Parishads in violation of Section 26 of the said Ain, 1998.

Having found *prima facie* substance to the above contentions of the respective petitioners present Rules Nisi had been issued by this Court with interim direction upon the respondent Nos.1-4 to take necessary steps towards implementing the respective provisions as provided in S.R.O. No.স্বাসবি/উপ-২/সি-৪/২০০৯/১৪২২ dated 17.06.2010 (Annexure-B to Writ Petition No.9593 of 2020) as well as “উপজেলা পরিষদ (কার্যক্রম বাস্তবায়ন) বিধিমালা, ২০১০”, as amended vide SRO No.323-Ain/2010 dated 19.09.2010 (Annexure-C-1 to Writ Petition No.9593 of 2020) by the UNOs and other functionaries immediately. In default, the respondents Nos.1-2 were at liberty to take appropriate step(s) against the wrongdoers but in accordance with law.

Respondent No.2 was further directed to issue a circular mentioning the above order of this Court towards implementing the circular and the Rules by transmitting it to all the concerned UNOs and Upazilla Parishad Chairmen across the country for compliance within a prescribed period.

In view of the statements so made in the instant writ petitions the categorical contentions of the petitioners so far *vires* of Section 33 of the Ain, 1998 is concerned are that the UNOs are not the elected representatives of any local government administrative unit like the members of the Upazilla Parishads, nor are they employed by the Upazilla Parishads to have the terms and conditions of their respective services to be governed by the “উপজেলা পরিষদ কর্মচারী (চাকুরী) বিধিমালা, ২০১০ (in short, the Rules, 2010). As a result, the elected representatives have virtually no control over the UNOs nor have any role to play in controlling the activities of the UNOs should they fail to discharge their respective duties as the CEOs and Secretaries of the Upazilla Parishads respectively as per

the directions of the Upazilla Parishads. Consequently, the UNOs are, in fact, directly controlling the affairs of the Upazilla Parishads including the affairs involving implementation of the decisions of the Upazilla Parishads as well as the financial expenditures as per their whims and dictations of their superior authorities in the administration which resultantly renders the whole system of Local Government and the mandates of Articles 7(1) and 59(1) of the Constitution meaningless and ineffective.

In support of the said contentions Mr. Ajmalul Hossain, K.C, the learned Senior Advocate with Mr. Hassan M.S. Azim, the learned Advocate appearing for the petitioners in Writ Petition No. 9593 of 2020 along with Mr. Md. Minhduzzaman Leeton, the petitioner appearing in person in writ petition No.9886 of 2020 at the very outset drawing attention to Articles 59 and 60 read with Articles 7 and 11 of the Constitution as well as the preamble to Act No. 24 of 1998 along with Sections 3, 4, 5 and 6 of the said Ain submits that “*Local Government*” in every administrative unit of the Republic shall be entrusted to the bodies composed of persons elected in accordance with law [Article 59(1) of the Constitution] who shall, subject to the Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by law relating to administration and the work of public offices, maintenance of public order, preparation and implementation of plans relating to public services and economic development [Article 59(2) of the Constitution].

Vide Article 60 of the Constitution, he submits, the Legislature by promulgating respective laws shall confer power upon the local

government bodies to give full effect to Article 59 including the power to impose taxes for local purpose, to prepare their budgets and to maintain funds. In other words, he goes to contend, in every “*administrative unit*” as defined in Article 152(1) of the Constitution the Local Government shall be entrusted to bodies composed of persons who are elected in accordance with law and shall be performing functions relating to administration, work of public offices, maintaining law and order etc, including financial matters like imposing taxes for local purposes, prepare budgets and to maintain funds. Accordingly, he submits that vide Section 4 of the Ain since Upazillas have been designated as ‘*administrative unit*’ for the purpose of Article 59 read with Article 152(1) of the Constitution hence, there can be no doubt to say that Upazilla Parishad is a “*Local Government*”. Consequently, he submits that Article 59 read with Article 60 of the Constitution will come into play. In that view of the matter, he goes to argue, vide Act No.21 of 2011 terming the UNO, who is admittedly a government officer, posted to the Upazilla administration as the CEO of the Upazilla Parishads entrusted with the power to provide secretarial assistance along with the power to implement the decisions of the Parishad including finance and other matters as prescribed under the Rules so framed hereunder, is in direct conflict with Article 59 read with Article 60 of the Constitution since they are not elected representatives of the local government administrative unit.

Secondly, he submits that UNOs are not employed by Upazilla Parishads hence, they are not regulated by the terms and conditions of “উপজেলা পরিষদ কর্মচারী (চাকুরী) বিধিমালা, ২০১০”, as framed by the government under Section 63 of the Ain, 1998, nor the UNOs have been made

accountable to Upazilla Parishads under the Ain, 1998 and or the Rules so framed thereunder. Resultantly, Upazilla Parishads have no control over the functions of the UNOs should they fail to discharge their respective duties as CEOs or Secretaries of the Upazilla Parishads while implementing the decisions and/or directions of the Upazilla Parishads. Accordingly, he goes to argue that by making amendment to Section 33 vide Act No. 21 of 2011 the Legislature has placed the UNOs in the control of administration as well as finance of Upazilla Parishads by terming him as the CEO, which is in flagrant violation of Articles 59 and 60 of the Constitution. Hence, it is void in its entirety under Article 7(2) read with Articles 11, 27 and 31 of the Constitution.

Lastly, he submits that the Constitution of the People's Republic of Bangladesh enshrines the doctrine of separation of powers; as such, the separation of powers between the elected representatives of the people in the Upazila Parishad and the public officers namely, the UNOs and other public officers working in the Parishads must be maintained in order to ensure that there is no overlap in the respective functions of the Chairman, as the head of the Parishad who together with the other elected members are the repository of all powers of the Republic and the UNOs, whose functions are subservient in nature to the elected representatives of the people. Accordingly, he submits that since Section 33 of the Ain, 1998 comes in direct conflict with the concept of separation of powers hence, it is liable to be struck down for being violative of the overall scheme of the Ain, 1998.

Conversely, Mr. Mohammad Mehedi Hasan Chowdhury, the learned Additional Attorney General appearing for the respondents-

government by filing affidavit-in-opposition as well as supplementary affidavit to the affidavit-in-opposition on behalf of the respondent No.2 submits that in order to understand the true purport of Section 33 of the Ain, 1998 it is required to be read conjunctively with Section 26 along with Sections 35-44 of the Ain, 1998, only then it will be apparent that Upazilla Parishad is enjoined with all powers to execute respective functions under the Parishad and that the Chairman of the Upazilla Parishad is invested with all the executive powers of the Parishad including the power of management and control over the institution or work transferred by the government (Section 24); even, the committees constituted under Section 29 are run by the elected members of the Upazilla Parishads in order to look over the matters as prescribed therein; the officers and employees are also appointed by the Upazilla Parishads (Section 34). Moreover, vide Sections 36, 38, 39 and 40 all financial related matters like funds, accounts, audit, even tax are being regulated under the disposition of the Parishad made by the Chairman, as per the respective Rules so framed thereunder, not the UNOs.

He further submits that UNO is not a member of the Upazilla Parishad, he performs the responsibility of the CEO and provides secretarial assistance to the Parishad. He places all files and papers of the transformed departments to the Chairman for his approval. Without the consent of the Chairman he is unable to implement any programme whatsoever linked to the Parishad or spend money from the fund of the Parishad. Rather, from the Ain, 1998 and the Rules so have been framed thereunder, he submits, it is apparent that the Chairman of the Parishad is the approving authority of all the administrative and financial matters



linked to the Parished and have depicted the secretarial role of UNOs as the CEO. Hence, he goes to argue that it cannot be said that Section 33, as amended vide Act No.21 of 2011, has violated Articles 59 and 60 of the Constitution. As such, he submits that question of being void under Article 7(2) of the Constitution dose not arise at all.

Article 7(2) of the Constitution declares the supremacy of the Constitution as the solemn expression of the will of the people. Our Constitution further declares that if any other law comes in conflict with this Constitution i.e., with any provision as contained in this Constitution, that other law to the extent of inconsistency, shall be void.

Article 7(2) of the Constitution is accordingly quoted below:

*“7.(2) This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.”*

Article 11 of the Constitution, as embodied in Part II of the Constitution is one of the fundamental principles of state policies, which stipulates that the Republic shall be a democracy in which, amongst others, effective participation by the people through their elected representatives in administration at all level shall be ensured. In this connection it is also to be remembered that vide Article 8(2) of the Constitution though the Principles (Articles 8-25) which have been set out in Part II of the Constitution are not judicially enforceable, but those are fundamental to the governance of Bangladesh, shall be applied by the State during the making of laws and shall be a guide while making interpretation of the Constitution.

Articles 11 and 8(2) of the Constitution are accordingly quoted as under:

*“11. The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed <sup>1</sup>[\* \* \*]<sup>2</sup>, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured].*

*8(2) The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable.”*

Keeping in view of the above quoted provisions of the Constitution now, let us have a look at Articles 59 and 60 of the Constitution, the only two Articles, as contained in Chapter III of Part IV of the Constitution, which are quoted below:

*“59. (1) Local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.*

*(2) Everybody such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to –*

*(a) administration and the work of public officers;*

*(b) the maintenance of public order;*

*(c) the preparation and implementation of plans relating to public services and economic development.*

*60. For the purpose of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds.]”*

Article 59 of our Constitution has introduced the scheme of “*Local Government*” as an institution in every “*administrative unit*”, as defined in Article 152(1) of the Constitution, which shall be entrusted to bodies composed of persons elected in accordance with law. Such elected bodies, subject to this Constitution and any other law, shall perform such functions as are prescribed by the Acts of Parliament. Respective functions of the said elected bodies include matters related to

administration and the work of public offices, maintenance of public order and the preparation and implementation of plans in connection with public service and economic development.

Article 60, however, provides that Parliament shall, by promulgation of law, confer power upon the said local government bodies including the power to impose taxes for local purposes, to prepare their budgets and to maintain funds, for the purpose of giving full effect to Article 59 of the Constitution.

In other words, vide Article 59 read with Article 60 of the Constitution, a corollary to Article 59 and are judicially enforceable, as has been observed by our Appellate Division in *Kudrat-E-Elahi Panir - Vs- Bangladesh* reported in *44DLR (AD) (1992)- 319* at *para-27*, and Article 152(1) of the Constitution the “*Local Government*” in every administrative unit i.e., either in a district or in any other area specifically designated by law, shall be entrusted to bodies composed of persons elected in accordance with law, who shall perform functions, as designated by the respective statutes including the power to impose taxes for local purpose, to prepare their budgets and to maintain funds. Thus, it is apparent that financial related matters, amongst others, of the respective administrative unit is one of the functions of the “*Local Government*” composed of the elected representatives of the people.

The next question which now arises for consideration is whether Upazilla Parishad constituted under the Act No.24 of 1991 is a “*Local Government*” within the meaning of Article 59 of the Constitution.

While resolving the issue, amongst others, whether Upazilla Parishad established by Order No.59 of 1982, as it stood amended by

Ordinance No.33 of 1983, is a Local Government the Appellate Division has categorically observed in *Kudrat-E-Elahi Panir -Vs- Bangladesh (Supra)* at *para-41(ii)*, *inter-alia*,

*“For an Institution to be a Local Government under the Constitution, two requirements are to be fulfilled. One is that a Local Government is constituted in an “administrative unit”, and the other is that the Local Government is entrusted to a body composed of elected persons”.*

Ultimately, the apex Court found in *Panir’s Case* at *para 108* that it was not a local government on the contention that-

*“... as the Upazila which is admittedly not a district has not been designated as an ‘administrative unit’ by law for the purpose of Article 59. Upazila being not an administrative unit within the meaning of Article 152(1) of the Constitution it is not a local Government under Article 59 of the Constitution. The designation as an administrative unit is a constitutional requirement and without such designation the Upazila cannot assume the character, nature and function of a local Government under the Constitution. ...”*

Act No.24 of 1998 has been promulgated by the Parliament with the object “যেহেতু সংবিধানের ৫৯ অনুচ্ছেদ অনুসারে নির্বাচিত প্রতিনিধিগণের সমন্বয়ে উপজেলা পরিষদ নামক স্থানীয় শাসন সংক্রান্ত প্রতিষ্ঠান স্থাপন এবং আনুষঙ্গিক বিষয়াদি সম্পর্কে বিধান করা সমীচীন ও প্রয়োজনীয়।”

Vide Section 3 of the Ain, 1998 all Thanas as inscribed in the 3<sup>rd</sup> column of the 1<sup>st</sup> Schedule of the said Ain has been designated as Upazilla and all Upazillas, as described under Section 3 has been identified as “*administrative unit*” as defined in Article 152(1) read with Article 59 of the Constitution.

Sections 3 and 4 of the said Ain, 1998 run as under:

“৩। উপজেলা ঘোষণা।- (১) এতদ্বারা প্রথমে তফসিলের তৃতীয় কলামে উল্লিখিত প্রত্যেক থানার এলাকাকে উক্ত কলামে উল্লিখিত নামের উপজেলা ঘোষণা করা হইল।

(২) এই আইন বলবৎ হইবার পর সরকার, সরকারী গেজেটে প্রজ্ঞাপনের মাধ্যমে কোন নির্দিষ্ট এলাকা সমন্বয়ে নূতন উপজেলা ঘোষণা করিতে পারিবে।

৪। উপজেলাকে প্রশাসনিক একাংশ ঘোষণা।- ধারা ৩ এর অধীনে ঘোষিত প্রত্যেকটি উপজেলাকে, সংবিধানের ১৫২(১) অনুচ্ছেদের সহিত পাঠিতব্য ৫৯ অনুচ্ছেদের উদ্দেশ্য পূরণকল্পে, এতদ্বারা প্রজাতন্ত্রের প্রশাসনিক একাংশ বলিয়া ঘোষণা করা হইল।”

Upazilla Parishad, constituted under Section 5, is a body corporate with perpetual succession, it shall have common seal and subject to the provisions of this Ain and the Rules so framed thereunder it has the right to acquire, hold and dispose of properties (Section 41). It also has the right to sue or be sued in the name of the Parishad [Section 66 of the Ain].

Section 5 is accordingly quoted below:

“৫। উপজেলা পরিষদ স্থাপন।- (১) এই আইন বলবৎ হইবার পর, যতশীঘ্র সম্ভব, প্রত্যেক উপজেলায় এই আইনের বিধান অনুযায়ী একটি উপজেলা পরিষদ স্থাপিত হইবে।

(২) পরিষদ একটি সংবিধিবদ্ধ সংস্থা হইবে এবং ইহার স্থায়ী ধারাবাহিকতা ও একটি সাধারণ সীলমোহর থাকিবে এবং এই আইন ও বিধি সাপেক্ষে, ইহার স্থাবর ও অস্থাবর উভয় প্রকার সম্পত্তি অর্জন করার, অধিকারে রাখার ও হস্তান্তর করার ক্ষমতা থাকিবে এবং ইহার নামে ইহা মামলা দায়ের করিতে পারিবে বা ইহার বিরুদ্ধে মামলা দায়ের করা যাইবে।”

According to Section 6, the Upazilla Parishad shall be composed of a Chairman, two Vice Chairman, of which one shall be female, Chairman of the respective Union, Mayor of the respective Pourashava and respective members of the reserved seats of female members, who are elected representatives elected under the respective statutes.

Section 6 is quoted below:

“৬। পরিষদের গঠন।-(১) এ আইনের বিধান অনুযায়ী নিম্নবর্ণিত ব্যক্তিগণ সমন্বয়ে উপজেলা পরিষদ গঠিত হইবে, যথাঃ-

(ক) চেয়ারম্যান;

(খ) দুইজন ভাইস চেয়ারম্যান, যাহার মধ্যে একজন মহিলা হইবেন;

(গ) উপজেলার এলাকাভুক্ত প্রত্যেক ইউনিয়ন পরিষদের চেয়ারম্যান বা সাময়িকভাবে চেয়ারম্যান হিসাবে দায়িত্ব পালনকারী ব্যক্তি;

(ঘ) উপজেলার এলাকাভুক্ত প্রত্যেক পৌরসভা, যদি থাকে, এর মেয়র বা সাময়িকভাবে মেয়রের দায়িত্ব পালনকারী ব্যক্তি ; এবং

(ঙ) উপ-ধারা (৪) অনুযায়ী সংরক্ষিত আসনের মহিলা সদস্যগণ।

(২) উপ-ধারা (১) এ উল্লিখিত চেয়ারম্যান ও ভাইস চেয়ারম্যানগণ নির্বাচন কমিশন কর্তৃক প্রেরিত ভোটার তালিকায় অন্তর্ভুক্ত ভোটারদের দ্বারা নির্বাচন কমিশন কর্তৃক নির্ধারিত সময়, স্থান ও পদ্ধতিতে গোপন ব্যালটের মাধ্যমে সরাসরি নির্বাচিত হইবেন।

(৩) কোন উপজেলার এলাকাভুক্ত ইউনিয়ন পরিষদ এবং পৌরসভা বাতিল হইবার কারণে উপধারা (১) এর দফা (গ) ও (ঘ) এর অধীন উপজেলা পরিষদের সদস্য থাকিবেন না এবং এইরূপ সদস্য না থাকিলে উক্ত উপজেলা পরিষদ গঠনের বৈধতা ক্ষুণ্ণ হইবে না।

(৪) প্রত্যেক উপজেলার এলাকাভুক্ত ইউনিয়ন পরিষদ এবং পৌরসভা, যদি থাকে, এর মোট সংখ্যার এক-তৃতীয়াংশের সম সংখ্যক আসন, অতঃপর সংরক্ষিত আসন বলিয়া উল্লিখিত, মহিলাদের জন্য সংরক্ষিত থাকিবে, যাহারা উক্ত উপজেলার এলাকাভুক্ত ইউনিয়ন পরিষদ ও পৌরসভা, যদি থাকে, এর সংরক্ষিত আসনের মহিলা সদস্য বা কাউন্সিলরগণ কর্তৃক তাহাদের মধ্য হইতে নির্বাচিত হইবেনঃ

তবে শর্ত থাকে যে, এই ধারায় কোন কিছুই কোন মহিলাকে সংরক্ষিত আসন বহির্ভূত আসনে সরাসরি নির্বাচন করিবার অধিকারকে বারিত করিবে না।

ব্যাখ্যা : এই উপ-ধারার অধীন সংরক্ষিত আসনে সংখ্যা নির্ধারণের ক্ষেত্রে, যদি উক্ত সংখ্যার ভগ্নাংশ থাকে এবং উক্ত ভগ্নাংশ অর্ধেক বা তদুর্ধ্ব হয়, তবে উহাকে পূর্ণ সংখ্যা বলিয়া গণ্যকরিতে হইবে এবং যদি উক্ত ভগ্নাংশ অর্ধেকের কম হয়, তবে উহাকে উপেক্ষা করিতে হইবে।

(৫) উপ-ধারা (১) এর অধীন উপজেলা পরিষদ গঠিত হইবার পর উহার অধিক্ষেত্রের মধ্যে নতুন পৌরসভা কিংবা ইউনিয়ন পরিষদ গঠিত হইবার কারণে উপজেলা পরিষদের পরবর্তী নির্বাচন অনুষ্ঠান না হওয়া পর্যন্ত উপ-ধারা (৪) এ উল্লিখিত আসন সংখ্যার কোন পরিবর্তন ঘটিবে না এবং এই কারণে বিদ্যমান উপজেলা পরিষদ গঠনের বৈধতা ক্ষুণ্ণ হইবে না।

(৬) উপধারা (১)- এর দফা (খ) ও (গ)-তে উল্লিখিত ব্যক্তি এই আইনের অধীন পরিষদের সদস্য হিসাবে নির্বাচিত হইয়াছেন বলিয়া গণ্য হইবেন।

ব্যাংখ্যা ৪ গঠিত পরিষদের মোট সদস্যদের (৭৫%) পঁচাত্তর শতাংশ নিধারণের ক্ষেত্রে ভগ্নাংশের উদ্ভব হইলে এবং তাহা দশমিক পঁচ শতাংশের কম হইলে অগ্রাহ্য করিতে হইবে এবং দশমিক পঁচ শূন্য শতাংশ বা তার বেশী হইলে তাহা এক গণ্য করিতে হইবে।।”

In addition, Parishad shall have its own fund “তহবিল” [Section 35], it is empowered to prepare and approve its own budget [Section 38], has power to maintain its own accounts [Section 39], it is subject to audit by the audit authority [Section 40], subject to approval of the government it is empowered to impose/realise tax for the local purpose [Sections 44, 45, 46, 47, 48, 49 of the Ain, 1998]. Parishad is also empowered to employ its own officers and staffs subject to the approval of the government [Section 34]. The government, however, has power under Sections 50, 51, 52 and 53 to supervision, direction and control, if be needed, but subject to the context as specified therein.

Considering the above criterions being possessed by the Upazilla Parishad, we have no manner of doubt to find that Upazilla Parishad constituted /established under the Act No. 24 of 1998 is a “*Local Government*” within the meaning of Article 59 read with Article 152(1) of the Constitution, to be run by the elected representatives who are to discharge their respective functions as enumerated in Article 59 read with Article 60 of the Constitution and subject to the Acts of Parliament.

In the light of Articles 59 and 60 of the Constitution we have meticulously examined the respective provisions as contained in the Act No.24 of 1998, wherefrom it clearly transpired that Upazilla Parishad is

being governed by the elected representatives led by the Chairman, who exercises its executive power (Section 26 of the Ain) over all matters including administration and finance, as prescribed under the said Ain.

However, vide Section 24 of the Ain the government with the consent of the Parishad is empowered to transfer the concerned officers and staffs under the management and control of the Parishad. Vide the 3<sup>rd</sup> Schedule of the Ain and pursuant to Section 24 the UNOs and his subservient employees under the Ministry of Establishment have been made transferable to Upazilla Parishads.

At this juncture, the learned Additional Attorney General drawing attention to Section 65 of the Ain submits that the government is empowered to confer all or any of the powers under this Ain to any person or authority by publication in gazette. Accordingly, he submits that UNO as being the representative of the government at the Upazilla level discharges his duties and functions as CEO for providing secretarial services to the Upazilla Parishad and is not exercising the powers of the Chairman of the Upazilla Parishad. Hence, Section 33 (as amended vide Act No.21 of 2011) does not come in conflict with Articles 7, 11, 59 and 60 or the scheme of the Ain, 1998.

As has been observed earlier, keeping the object of Article 59 of the Constitution in mind Act No. 24 of 1998 has been promulgated by the Parliament by giving clear perspective of the powers to be exercised and functions to be discharged by the Upazilla Parishad, an institution composed of elected representatives. At the same time, the Parliament vide the respective provisions of law, like Sections 24/65 of the Ain, 1998, has empowered the government to transfer government officials



under the management and control of the Upazilla Parishads along with all or any of the powers under this Ain, 1998 by publication in gazette . It is to be remembered that conferring such power to the government officials under the Ain, 1998 cannot be in conflict with Article 59 read with Article 60 of the Constitution, since Acts of Parliament emanating from Article 59 is subject to the Constitution [Article 59(2) of the Constitution].

Prior to amendment of Section 33 vide Act No. 21 of 1998, said section of the Ain 1998 had provided that –

“৩৩। পরিষদের সচিব।- উপজেলা নির্বাহী অফিসার পরিষদের সচিব হইবেন এবং তিনি পরিষদকে সাচিবিক সহায়তা প্রদান করিবেন।”

In the light of the said provision of law the government subsequently framed Rules namely “ উপজেলা পরিষদের (কার্যক্রম বাস্তবায়ন) বিধিমালা, ২০১০” in exercise of power as provided under Section 63 of the Ain, 1998, published in gazette on 15.02.2010 (Annexure-C to Writ Petition No.9593 of 2020) narrating the respective duties and functions, which are secretarial in nature. Keeping in view of Section 33, as it then was, the Local Government Division, Ministry of LGRD vide Memo No.স্বাসবি/উপ-২/সি-৪/২০০৯/১৪২২ dated 17.06.2010 (Annexure-B to Writ Petition No.9593 of 2020) had prescribed respective *Charter of Duties* of the UNOs to be provided to the respective Upazilla Parishads.

At this juncture, Section 33 has undergone an amendment vide Act No.21 of 2011 introducing the UNOs as the Chief Executive Officer “মুখ্য নির্বাহী অফিসার” with powers of administering all administrative and financial related matters, but without making them accountable to the

Upazilla Parishads, which is under challenge being allegedly in conflict with Articles 59 and 60 of the Constitution.

Impugned Section 33 of the Ain, 1998 (as amended vide Act No. 21 of 2011) runs as under:

“৩৩। পরিষদের মুখ্য নিবাহী কর্মকর্তা –(১) উপজেলা নির্বাহী অফিসার পরিষদের মুখ্য নিবাহী কর্মকর্তা হইবেন এবং তিনি পরিষদকে সাচিবিক সহায়তা প্রদান করিবেন।

(২) পরিষদের সিদ্ধান্ত বাস্তবায়ন, আর্থিক শৃংখলা প্রতিপালন এবং বিধি দ্বারা নির্ধারিত অন্যান্য কার্যাবলী পরিষদের মুখ্য নিবাহী কর্মকর্তা সম্পাদন করিবেন।”

Admittedly, the UNOs are the high ranking government officers at Upazilla level being transferred to Upazilla Parishads by the government under Section 24 of the Ain, 1998 in order to assist the Upazilla Parishads while dealing with the administration and implementation of the development work, who also works as a bridge in between the government and Upazilla Parishads making correspondences in between; they are appointed and are being governed by the terms and conditions of service of the Republic and receive salary from the government exchequers; their ACR (Annual Confidential Reports) so far their performance in the respective Upazilla Parishads are concerned are also being prepared by the authority concerned of the government. In other words, UNOs are independent government entity placed in the respective Upazilla Parishads to provide administrative assistance only.

Vide the impugned amendment of Section 33, the UNOs have now been designated as the “*Chief Executive Officer*” in place of the word “সচিব” i.e., “*Secretary*”; thus, comes in conflict with Section 26(2) of the Ain, 1998, which provides as follows.

“২৬। নির্বাহী ক্ষমতা।-  
(১) .....

(২)পরিষদের নির্বাহী ক্ষমতা পরিষদের নিকট হইতে ক্ষমতাপ্রাপ্ত চেয়ারম্যানের, ভাইস চেয়ারম্যান, সদস্য বা অন্য কোন কর্মকর্তার মাধ্যমে প্রযুক্ত হইবে।”

Further, the Parliament while making amendment of Section 33 has given the UNOs to administer all administrative and financial powers of the Upazilla Parishads without making them accountable to the said Parishad led by the Chairmen, who are the epitome of all powers in the respective Upazilla Parishads as being the elected representatives of the people for the respective administrative unit. Consequently, a parallel administration has come into effect under the Ain, 1998. Resultantly, the elected representatives have no control over the UNOs nor they have any role to play in regulating the activities of the UNOs should they failed to discharge their duties as the CEOs of the Upazilla Parishads.

[Emphasis given]

As a result, Section 33, as amended vide Act No. 21 of 2011, comes in direct conflict with Articles 59 and 60 of the Constitution as well as it goes to violate the overall scheme of the Upazilla Parishad Ain, 1998. Hence, it is void in terms of Article 7(2) of the Constitution.

As to the 2<sup>nd</sup> part of the Rule Nisi, the petitioners have challenged the actions of the respondents in formation of different committees in respect of the activities in connection with the Upazilla Parishads allegedly in violation of Sections 4 and 29 of the Ain, 1998 as well as Articles 7(1) and 59(1) of the Constitution; also, in derogation of the notification dated 17.06.2010 (Annexure-B) containing the respective *Charter of Duties* of the government officials of the respective departments transferred by the government to Upazilla Parishads under Section 24 of the Ain, 1998 and Memo dated 14.10.2015 (Annexure-D) issued by the Cabinet Division with regard to the payment of salaries of

the government officials transferred to Upazilla Parishads under Section 24 from the fund “তহবিল” being provided by the government in the Upazilla Parishads and also, by nominating the UNOs as Chairmen and the Upazilla Chairmen as Advisors to the said committees in violation of Section 26 of the Ain.

In support of the said assertions Mr. Ajmalul Hossain, the learned Senior Advocate submits that after the amendment of the Ain, 1998 in 2011, under the 3<sup>rd</sup> Schedule the government had transferred 17 (seventeen) departments under 12 (twelve) different ministries of the government to the Upazilla Parishads with all staffs and respective duties. In this regard he submits that the Cabinet Division vide Memo No.04.00.0000. 512.82.048.14.402 dated 14.10.2015 issued guidelines to all the concerned Ministries about how the deputed officers and staffs would be paid with direction upon those Ministries to take necessary steps to that effect immediately. Unfortunately, till date said memo has not been implemented by the respondents concerned.

In this regard he further submits that the actions of the respondents with regard to formation of the respective committees have directly negated the mandates of Article 7(1) and 59(1) of the Constitution as the elected representatives have not been entrusted with the functions falling under Rule 14(1) of the Rules, 2010 as well as SRO No.স্বাসবি/উপ-২/সি-৪/২০০৯/১৪২২ dated 17.06.2010 (Annexure-B) and Memo No. 04.00.0000.512.82.048.14.402 dated 14.10.2015 (Annexure-D) issued by the Cabinet Division, rather the UNOs have been entrusted with the same who are merely officers in the service of the Republic and not elected entities. Consequently, under the garb of performing administrative

functions, the unelected entities will continue to abuse the system in total frustration of the rights of the people of this country.

In reply, Mr. Mohammad Mehedi Hasan Chowdhury, the learned Additional Attorney General submits that “*Administering Various Development Initiatives to Achieve the Goal of the Government*” is incorporated in the retained and regulatory functions of the government which are beyond the periphery of the Upazilla Parishads, as depicted in Memo No.1422. In this regard, he emphatically contends that it is the sole jurisdictional capacity of the government to prepare policy and mechanism and constitute committees to implement those government financed development initiatives. Accordingly, he submits that assigning the UNOs as the Chairmen of those committees, which are outside the scope of work of the Parishad are not breach of the Ain, 1998 and/or the Rules so have been framed thereunder or any of the provisions of the Constitution.

No doubt, vide Section 26(2), as quoted above, executive power of the Upazilla Parishad is exercised by the Chairman, Vice Chairman, member or any other officers being empowered to that effect. Section 29(1), however, provides power to Parishad to appoint required number of committees in order to assist the Parishad subject to condition that the Chairman of the Upazilla Parishad cannot be the President of the permanent committees; sub-section (2) prescribes the concerned subject matters on which permanent committees may be constituted. Section 29(3) provides that concerned UNO shall be the Member Secretary of the said Committee. Section 29(4) empowers to co-opt any person as the member of the committee being an expert to the related subject matter and Section

29(5) states that the said co-opt member and the Member Secretary shall have no voting right.

In this regard, the categorical assertion of the respondent-government is that administering various development initiatives to achieve the goal of the government is incorporated in the retained regulatory functions of the government, which is beyond the domain of the Upazilla Parishads. Moreover, considering the requirement the government prepares policy and mechanism. In order to implement those government financed development initiatives respective committees are constituted led by the UNO as its Chairman, and that those regulatory functions are being implemented from the government fund.

On the face of the said assertions, the petitioners have failed to show from documents that respective committees, as have been referred to in Annexures-F series to writ petition No.9593 of 2020 are the product of Section 29 of the Ain and that those committees led by the UNO as its Chairman are using fund “তহবিল” of the Upazilla Parishads. In the absence of any such documents the averments of the petitioners so made to that effect have no leg to stand.

Last but no the least, the claim of the petitioners is that the UNOs, by usurping powers frequently use the terminology “উপজেলা প্রশাসন” in their correspondences in place of “উপজেলা পরিষদ” (Annexure-G series to Writ Petition No.9593 of 2020) in violation of Section 26(3) of the Ain.

Section 26(3) of the Ain, 1998 provides as follows:

“২৬। নির্বাহী ক্ষমতা।-

(৩) পরিষদের নির্বাহী বা অন্য কোন কার্য পরিষদের নামে গৃহীত হইয়াছে বলিয়া প্রকাশ করা হইবে এবং উহা বিধি দ্বারা নির্ধারিত পদ্ধতিতে প্রমাণীকৃত হইতে হইবেঃ”

In response to the said claim the contention of the respondents-government is that there is no scope for using “Office of the Upazila Narbahi Officer” in the letter head or in the meeting of the Upazila Parishad or matters related to the Parishad. The Local Government Division in this connection had circulated Memo No.429 dated 06.02.2012 bearing instructions to that effect which is being followed accordingly ,for, a UNO is liable to the Parishad for activities pertinent to the Upazilla Parishad.

The respondents government having conceded to the assertion of the petitioners that use of the terminology “উপজেলা প্রশাসন” instead of “উপজেলা পরিষদ” in the letter head of the UNO is a violation of law and to that effect the authority concerned of the respondents-government having issued Memo No.429 dated 06.02.2012 providing instructions to be followed by the UNOs in the respective Upzilla Parishad hence, it is redundant to make detailed observations and findings to that effect.

In view of the facts and circumstances of the case and the observations and findings so made above both the Rules in connection with Writ Petition Nos. 9593 and 9886 both of 2020 are made absolute in part with the following decisions:

1. *Upazilla Parishads constituted/established under Act No. 24 of 1998 is a Local Government within the meaning of Article 59 read with Article 152(1) of the Constitution;*
2. *Vide the impugned amendment of Section 33 of the Ain, 1993 the Parliament has given the UNOs to administer all administrative and financial powers of the Upazilla Parishads without making them accountable to the respective Upazilla Parishad, which is*

*composed of the elected representatives and is the product of Articles 59 and 60 of the Constitution; hence, comes in direct conflict with Articles 59 and 60 of the Constitution as well as the overall scheme of the Ain, 1998. Accordingly, Section 33(as amended vide Act No. 21 of 2011) is void in view of Article 7(2) of the Constitution;*

3. *Formation of the respective committees led by the UNOs as its President is to implement government financed development initiatives with government funds, not with the funds “তহবিল” of Upazilla Parishads and also, those being not the respective committees under Section 29 of the Ain, 1998 hence, assertions of the petitioners to that effect fails; and*
4. *Use of the terminology “উপজেলা প্রশাসন” by the UNOs in their correspondences in place of “উপজেলা পরিষদ” (Annexure-G series) being in violation of Section 26(3) of the Ain, is hereby declared to have been done without lawful authority and hence, is of no legal effect.*

There will be no order as to costs.

Communicate the judgment and order to the respondents concerned at once.

**Ahmed Sohel, J:**

I agree.