

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

**Writ Petition No. 3901 of 2020**

**IN THE MATTER OF:**

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

**-And-**

**IN THE MATTER OF:**

Subir Nandi Das ...Petitioner

**-Versus-**

The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka and others

.....Respondents

Mr. Md. Abdul Alim Miah (Jewel), advocate with  
Mr. Subir Nandi Das (In Person), advocate  
Mr. Abdul Kaium Khan, advocate  
Mr. Ashfakuzzoha Roman, advocate  
Ms. Momtaj Parvin, Advocate, and  
Mr. Subrata Kumar Das, advocate

.....For the petitioner

Mr. A.M. Amin Uddin, Attorney General with  
Mr. ABM Abdullah Al Mahmud, DAG

..... For the respondents

**Present:**

**Mr. Justice K.M. Kamrul Kader**

**And**

**Mr. Justice Sardar Md. Rashed Jahangir**

Heard on: 05.12.2021

And

**Judgment On: 16.03.2022**

**K. M. Kamrul Kader , J :**

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh this Rule Nisi was issued on 18.08.2020, in following terms:-

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why a direction should not be given upon the Respondents to display the portrait of the Father of the Nation Bangsbandhu Sheikh Mujibur Rahman in the Sessions Hall (অধিবেশন হল) of Parliament (House of the Nation) as enunciated in Article 4A of the Constitution of the People’s Republic of Bangladesh and/or pass such other or further order or orders as to this court may seem fit and proper.*

Facts relevant for disposal of the Rule, are that the petitioner is an Advocate of the Supreme Court of Bangladesh and who has inclined to file this writ petition in the form of Public Interest Litigation (hereinafter referred as PIL) before this Court in order to uphold and protect the constitutional sprit being the solemn duty of a citizen of Bangladesh by virtue of the constitutional mandates envisaged on Article 7 and Article 21(1) of the Constitution of the People’s Republic of Bangladesh and also for adhering the Canons of Professional Conduct and Etiquette of Advocates who firmly retains the ideology of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman.

It is stated that the Government in exile (প্রবাসী সরকার) of Bangladesh issued the Proclamation of Independence on 10<sup>th</sup> April 1971, which served as the interim first constitution of Bangladesh. After independence, the East Pakistani members

of Pakistan's federal and Provincial Assembly were transformed into members of the Constituent Assembly of Bangladesh which was constituted under the provision of the Provincial Constitution of Bangladesh Order, 1972. The first session of the Constituent Assembly was held in the Old Parliament House, (at present Prime Minister Office), Tejgaon, Dhaka and the Constituent Assembly sat on several sessions and it also formed a committee of 34 members for drafting the Constitution of Bangladesh. The Constituent Assembly treating Bangabandhu Sheikh Mujibur Rahman as founder of Bangladesh and his portrait was kept and preserved in the session room of the Constituent Assembly.

It is also stated that the existing Constitution of the People's Republic of Bangladesh was adopted and enacted by the Constituent Assembly on 4<sup>th</sup> November, 1972 which came into effect from 16<sup>th</sup> December, 1972 and the preamble of the Constitution of the People's Republic of Bangladesh contains the core elements of independent of Bangladesh and narrates it as *“We, the people of Bangladesh, having proclaimed our independence on the 26<sup>th</sup> day of March, 1971 and through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh;....”* thereby glorifying the significance of liberation war and historic struggle for achieving the sovereignty Bangladesh which was led

by the Founder Father of the Nation, Bangabandhu Sheikh Mujibur Rahman and only through his decades long struggle for independence against the autocratic rule of Pakistan, finally achieving independence of Bangladesh in 1971.

It is further stated that under the new constitution the 1<sup>st</sup> Parliamentary Election was taken place in 1973 and the 1<sup>st</sup> Parliament was formed on 7<sup>th</sup> April, 1973 for a period of 5 years but after assassination of the Father of Nation Bangabandhu Sheikh Mujibur Rahman, the elected parliament was dissolved on 6<sup>th</sup> November, 1975. Thereafter, successive military coups resulted in the emergence of Army Chief of Staff General Ziaur Rahman who pledged the army's support to the civilian government headed by President Chief Justice Abu Sadat Mohammad Sayem, who acted at Zia's behest, Justice Sayem dissolved Parliament, promising fresh election in 1977 and instituted martial law. In February, 1979 the second Parliament Election was held and tenure of the 2<sup>nd</sup> Parliament was from 2<sup>nd</sup> April, 1979 to 24<sup>th</sup> March, 1982 and after the assassination of military dictator president Ziaur Rahman, another Military dictator Hossain Mohammad Ershad assumed power and declared martial law in the country and he subsequently held 3<sup>rd</sup> and 4<sup>th</sup> Parliamentary Election in 1986 and 1988 respectively and assumed power as the President of the country. Subsequently, 5<sup>th</sup> Parliamentary Election was held in

1991 where the political party BNP headed by Begum Khaleda Zia assumed power as the Prime Minister of the country. In 1996 the 7<sup>th</sup> Parliamentary Election was held and the present Prime Minister and daughter of the father of nation Bangabandhu Sheikh Mujibur Rahman became the Prime Minister of Bangladesh who for spreading the contribution of Bangabandhu Sheikh Mujibur Rahman in the freedom of Bangladesh and for showing respect for him enacted a law namely বঙ্গবন্ধু শেখ মুজিবর রহমানের প্রতিকৃতি সংরক্ষণ ও প্রদর্শন আইন, ২০০১ and after enactment of the said Act, the portrait of Bangabandhu Sheikh Mujibur Rahman was displayed and preserved in every government/semi-government office of Bangladesh.

It is also stated that just after enactment of the aforesaid Ain, 2001, the 8<sup>th</sup> Parliamentary Election was held and on 28<sup>th</sup> October, 2001 the political party namely Bangladesh Nationalist Party (BNP) formed the Government and they just after assuming power repealed the বঙ্গবন্ধু শেখ মুজিবর রহমানের প্রতিকৃতি সংরক্ষণ ও প্রদর্শন আইন, ২০০১ with a view to erase the name of our great leader and father of nation Bangabandhu Sheikh Mujibur Rahman from the history of Bangladesh. Thereafter, from 1975 to 1996 and from 2001 to 2008 the country Bangladesh was ruled by such allied forces that has some sort participation in killing of our great leader and father of nation Bangabandhu Sheikh Mujibur Rahman. Subsequently, they had patronized

the killers of Bangabandhu by providing them good position in the Government as well as in various Government offices in home and abroad. They all had a common intention to erase the name of Bangabandhu from the history of Bangladesh and during these periods the portrait of the Father of Nation Bangabandhu Sheikh Mujibur Rahman was removed from all offices including Parliament and during their realm it was treated as an offence to mention the name of Bangabandhu.

It is stated that the present ruling party Awami League headed by the Hon'ble Prime Minister Sheikh Hasina M.P. assumed power in 2008 and got majority in the 9<sup>th</sup> Parliament and formed Government for the Session from 2009 to 2013 and after getting majority the present government through parliament amended in the Constitution by inserting Article 4A with provision of preservation and display of portrait of Bangabandhu Sheikh Mujibur Rahman and after insertion of aforesaid Article 4A in our Constitution, the Portrait of Bangabandhu Sheikh Mujibur Rahman is preserved and displayed in all executive offices, different government and semi-government offices of the State except in the Court Rooms and Sessions Room of Parliament. Before 15<sup>th</sup> August, 1975 the Portrait of Bangabandhu Sheikh Mujibur Rahman was kept and displayed in every court room of the country, though there was no provision in any law to preserve and display the same,

on the other hand, in spite of specific provision in Article 4A of the Constitution, the portrait of Bangabandhu Sheikh Mujibur Rahman was not kept and displayed in the court room and therefore challenging the inaction/failure to display and preserve portrait of Bangabandhu Sheikh Mujibur Rahman in the court room this present writ petitioner filed Writ Petition No. 9080 of 2019 before this Court and after preliminary hearing this Court on 29.08.2019 issued Rule Nisi and direction was given upon the present respondent No.1 along with other respondents to preserve and display the portrait of Bangabandhu Sheikh Mujibur Rahman within 02(two) months from date of receipt of the Order and in view of the said direction the Portrait of Bangabandhu Sheikh Mujibur Rahman is preserved and displayed in every court room of the country and afterwards the Rule was taken up for hearing and after hearing the Rule was made absolute vide judgment and order dated 17.10.2019.

It is further stated that view of provision of Article 4A of the Constitution the Portrait of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman shall be preserved and displayed at the office of the Speaker and the Speaker, as the Head of Legislative organ of the State, who was elected from the members of parliament under Article 74 the Constitution to Chair all sessions of the Parliament and therefore, the Speaker

is mainly elected for performing his/her duty as described in Article 74 of the Constitution and the office of the Speaker means the Parliament Session room wherefrom the Speaker performs his/her duties. It is pertinent to mention here that duties of Speaker may be classified into two categories, first one is legislative duty and the last one is administrative duty. The administrative function of Speaker is performed from a chamber room adjacent to the Sessions Hall. Though, the Portrait of Bangabandhu Sheikh Mujibur Rahman is preserved and displayed in the administrative office of the Speaker, but the same is not preserved and displayed in the legislative office of the Speaker. Next, on 30.07.2020, the petitioner made an application to the Respondent No. 2 and requesting him to preserve and display the portrait of our Father of the Nation, Bangabandhu Sheikh Mujibur Rahman in the Parliamentary Session/Hall room, the legislative office of the Speaker. But the respondents did not pay any heed to it.

Being aggrieved by the inaction of respondents, finding no other alternative and efficacious remedy, the petitioner filed this writ petition before this Court and obtained the instant Rule.

Mr. Abdul Alim Miah the learned Advocate with Mr. Subir Nandi Das Advocate (In Person), Mr. Abdul Kaium Khan, Mr. Ashfakuzzoha Roman Ms. Momtaj Parvin and Mr. Subrata Kumar Das learned Advocates appearing for the petitioner

submits that the portrait and sculpture of the Father of Nation and national heroes of various nations of the world are kept and displayed in their national parliament such as in India, Pakistan, USA, UK, Vietnam along with several Country, though there is no law for such preservation and display in those countries for remembrance their glorious history and for showing respect to their Father of Nation or national heroes is passed and such unwritten provision/similar path was followed just after the birth of Bangladesh in 1971. He also submits that the Portrait of the Father of Nation, Bangabandhu Sheikh Mujibur Rahman was also kept and preserved in every office including Court room and Parliament Session Hall/Room of the country, but after assassination of Bangabandhu Sheikh Mujibur Rahman, the Portrait of the Father of Nation was removed from everywhere. He further submits that the word "Office" has been well defined in the Black Law Dictionary and as per the definition a Legislative "Office" is that which is related to make or enactment of laws, as distinguished from the judicial department. Besides, it appears from the Guideline in respect of function and procedures of Bangladesh Parliament that the legislative office has three functions namely (1) enactment of legislation , (2) consent to taxation and control of public expenditure and (3) ensuing accountability of the Government. Since the Session Hall of Parliament wherefrom the function of the legislative organ is operated, so the very

Sessions Hall of the Parliament is a legislative office of the Republic and as per the provision of Article 4A of the Constitution of the People's Republic of Bangladesh, the portrait of Bangabandhu Sheikh Mujibur Rahman ought to be displayed and preserved in the Sessions Hall of the Parliament, but the respondents for unknown reasons kept themselves silent in implementing the provision enunciated in Article 4A of the Constitution which is illegal. He next submits that it is evident from the plain reading of Article 4A that the legislative intension of the insertion of this Article is to glorifying the contribution of Bangabandhu and his suffering, dreaming, architecting and implementing an independent Bangladesh for its People's, which is the basic elixir of our constitution and thereby display the portrait of Father of the Nation in all visible places inclusive to Government offices where Parliament Session Hall are included within the preview of the said Article and as such, the respondents shall be obliged by Constitution to display and preserve the Portrait of Bangabandhu Sheikh Mujibur Rahman in the Session Hall of Parliament of Bangladesh. To substantiate his submission the learned Advocate for the petitioner placed reliance in the case of *Subir Nandi Das -Versus- Bangladesh* reported in 73, DLR (2021), 349.

Mr. A. M. Amin Uddin the learned Attorney General of Bangladesh with Mr. ABM Abdullah Al Mahmud, the learned

Deputy Attorney General appearing on behalf of the respondent No.2 by filing an affidavit-in-compliance supported the contention of the Rule Nisi and submits that in compliance of the Court's order dated 18.08.2020, the Respondent has instructed the appropriate authority to take necessary measures to preserve and display the portrait of Father of the Nation, Bangabandhu Sheikh Mujibur Rahman in the Parliamentary Session/Hall room, the legislative office of the Speaker. Learned Attorney General also submits that the portrait of Father of the Nation, Bangabandhu Sheikh Mujibur Rahman has been placed right behind the chair of the Hon'ble Speaker in the Sessions Hall (অধিবেশন হল) of Parliament (House of the Nation) and with this regard, the Respondent Government issued a letter vide memo No.11.00.0000.611.04.009.20(32) dated 27.09.2020 under the signature of the Senior Secretary, Parliament Secretariat, Bangladesh and also sent a compliance with photograph of the portrait of the Father of Nation, Bangabandhu Sheikh Mujibur Rahman to the Registrar General of Supreme Court of Bangladesh by an office letter, vide Memo No.11.00.0000.611.04.009.20.36 dated 12.10.2020.

Learned Attorney General lastly submits that the Father of the Nation Bangabandhu Sheikh Mujibur Rahman was the great leader of the democratic movement against the Pakistani autocratic government and the leader of language movement in

1952 and also a leader of non-cooperation movement which was the basis of our great Liberation War in 1971. He was the architect and great leader of our National Liberation War, who declared Independence of Bangladesh on 26<sup>th</sup> March, 1971 under his leadership Bangladesh has emerged as a sovereign State and as such, the founder Father of the Nation, Bangabandhu Sheikh Mujibur Rahman should be respected by all the citizen of Bangladesh as well as all organs of this State including the legislature. Since, the Court's order has already been compiled by the authority and as such, he prays for dispose of the Rule.

Heard the learned Advocates of both sides and perused the writ petition, affidavit-in-compliance filed by the respondent No.2 and other materials on record available thereto.

This writ petition is in the nature of public interest litigation, as such, the first question comes up for consideration is as to the *locus standi* of the petitioner in maintaining this application as an aggrieved person under Article 102 of the Constitution of the People's Republic of Bangladesh.

In the instant writ petition, we find that the petitioner challenging the inaction of the Respondents to preserve and display the portrait of Father of the Nation, Bangabandhu Sheikh Mujibur Rahman in the Parliamentary Session/Hall room (অধিবেশন হল), the legislative office of the Hon'ble Speaker as

per provision of the Article 4A of the Constitution of the People's Republic of Bangladesh. The petitioner is an Advocate of the Supreme Court of Bangladesh and who is inclined to file this writ petition in the form of Public Interest Litigation (PIL) before this Court in order to uphold and protect the constitutional spirit being the solemn duty of a citizen of Bangladesh by virtue of the constitutional mandates envisaged on Article 7 and Article 21(1) of the Constitution of the People's Republic of Bangladesh and also for adhering the Canons of Professional Conduct and Etiquette of Advocates, who firmly retains the ideology of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman. Due to inaction of the Respondents in implementing the provision of the Article 4A of the Constitution of the People's Republic of Bangladesh, his heart's bleeds. Petitioner is a cautious citizen of Bangladesh and under constitutional obligation filed this application before this Court. In this connection, it is worthwhile to refer to the Constitutional provision for ensuring public duty. The Constitutional commands the duties of the citizens and of public servants in no uncertain terms. Article 21 reads as follows:

*“21 (1) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property.*

*(2) Every person in the service of the Republic has a duty to strive at all times to serve the people.”*

But in spite of the Constitutional commands the hiatus remained as before between the letters of law and the implementation thereof in this field due to unresponsiveness of the apathetic concerned officials. The oath and affirmation of office for the Judges of the Supreme Court requires that they will preserve, protect and defend the Constitution and the laws of Bangladesh. These are not mere ornamental empty words. These glorifying words of oath, eulogizes the supremacy of judiciary. It is by now well settled that if the Government or its functionaries fails to act and perform its duties cast upon them by the laws of this Republic, the High Court Division of the Supreme Court, shall not remain a silent spectator to the inaction on the part of the Government or its officials, rather, in order to vindicate its oath of office can issue, in its discretion, necessary orders and directions, under Article 102 of our Constitution to carry out the intents and purposes of any law to its letter, in the interest of the people of Bangladesh because all powers in the Republic belong to the people as per Article 7 of the Constitution and their exercise on behalf of the people shall be effected only under, and by the authority of the Constitution. Thus, we are of the view that the writ petition is maintainable.

Admittedly, Bangabandhu Sheikh Mujibur Rahman was one of the most charismatic leaders of the World. Bengalis credited Bangabandhu for leading the country towards independence in 1971. In the year of 2004, BBC opinion poll, Bangabandhu was voted as the Greatest Bengali of all time and ranked first on the list followed by Asia's first Nobel Laureate Rabindranath Tagore (2<sup>nd</sup>) and Bangladeshi National Poet Kazi Nazrul Islam (3<sup>rd</sup>). Bangabandhu Sheikh Mujib's 7 March speech in 1971 is recognized by UNESCO for its historic value, and enshrined in the Memory of the World Register–Asia and the Pacific. Bangabandhu Sheikh Mujib emerged as a major political figure in Pakistani politics between 1948 and 1971. He represented the Bengali grassroots. Young Khuka (Mujib) showed the potential of leadership since his school life. While he was a student of Gopalganj Missionary School, in the year of 1938. The young Mujib is said to have organized an agitation in order to impress the then Chief Minister of Bengal Mr. A.K. Fazlul Huq and H.S. Suhrawardy about the depressed situation of the region. Thereafter, he was elected as General Secretary of the Islamia College Students Union in 1946. He was an activist of the Bengal Provincial Muslim League and a member of the All India Muslim League Council from 1943 onwards. In politics he had been a fervent follower of H.S. Suhrawardy. In 1947, the British India was divided into two independent dominions in South Asia: India and Pakistan. The Dominion of Pakistan

comprised two geographically and culturally separate areas to the east and the west, however, political power was concentrated in West Pakistan, and East Pakistan (Bangladesh) was being exploited politically, socially and economically, leading to many grievances. After partition, he got himself admitted into the University of Dhaka to study law but was unable to complete it, because he was expelled from the University in early 1949, on the charge of inciting the fourth-class employees in their agitation against the University Authority. Sheikh Mujibur Rahman was one of the principal organizers behind the formation of the East Pakistan Muslim Students League in 1948. His political career began with his election to one of the three posts of Joint Secretaries of the newly established East Pakistan Awami Muslim League in 1949, while he was in jail. In 1953, Sheikh Mujib was elected General Secretary of the East Pakistan Awami Muslim League, which he holds until 1966, when he became President of the party.

Bangabandhu Sheikh Mujibur Rahman was one of the first among the language movement detainees in 11<sup>th</sup> March 1948. In 1952, Pakistani regime wanted to impose Urdu as the only national language of Pakistan, excluding Bengali, the mother tongue of the people of East Pakistan (Bangladesh). His address on 21<sup>st</sup> September, 1955 in the Pakistan Constituent

Assembly on the question of Bangla language is noteworthy, which reads as follows:

*“We want to speak in Bengali here, whether we know any other language or not it matters little for us. If we feel that we can express ourselves in Bengali, we will speak always in Bengali even though we can speak in English also. If that is not allowed, we will leave the House, but Bengali should be allowed in this house; that is our stand.”*

Bangabandhu Sheikh Mujibur Rahman is a magnetic organizer grew in political eminence in the early 1960s. He had established his full command over the party. He had announced his famous “six-point programme” in 1966, which is our Charter for Survival, these Six-Point meant virtual independence for East Pakistan. Following the presentation of the Six-point programme, the Ayub regime put him behind the bars in Agartala conspiracy case officially known as *State-vs.-Sheikh Mujibur Rahman and Others*. He was charged with conspiring against the State of Pakistan together with the other co-accused. During the trial of the Agartala conspiracy case, Sheikh Mujib's charisma grew further and almost the whole nation stood up in protest of the trial of their leader. The mass movement, organized especially by the younger generation, reached such a momentum in early 1969 that the Ayub regime was forced to withdraw the case. Sheikh Mujib was released

unconditionally on 22<sup>nd</sup> February, 1969. On the following day of his release, the Sarbadaliya Chhatra Sangram Parishad (All Parties Students Action Committee) organised a mass reception to Sheikh Mujibur Rahman at Ramna Racecourse (now, Suhrawardy Udyan) and Mr. Tofael Ahmed, the President of the said Parishad, bestowed on Sheikh Mujibur Rahman the title of 'Bangabandhu' (Friend of the Bangalis) on behalf of the Sangram Parishad. Thereafter, first general election of Pakistan was held in December 1970, which made Bangabandhu Sheikh Mujibur Rahman the sole spokesman of Pakistan. Under his leadership, the Awami League won 167 (including 7 women reserved seats) out of 169 seats of the East Pakistan in the Pakistan National Assembly. The people gave him the absolute mandate in favour of his Six-point programme. Due to this reason, President General Yahya and Mr. Z. A. Bhutto M.P. had conspired not to allow Bangabandhu Sheikh Mujibur Rahman to form the government in the centre. President Yahya Khan had postponed the National Assembly meeting unilaterally on 1<sup>st</sup> March, 1971 which scheduled to be held on 3<sup>rd</sup> March 1971. The announcement triggered off the general agitation in East Pakistan. In response, the Bangabandhu called for an all-out non-cooperation movement in East Pakistan. The whole province supported him, during the course of non-cooperation movement from 2<sup>nd</sup> to 25<sup>th</sup> March 1971; the entire civil administration in East Pakistan came under his control and

moved according to his directives. He became, in fact, the *de facto* Head of Government for the province. During this time, on 7<sup>th</sup> March, 1971 Bangabandhu Sheikh Mujibur Rahman made a historic address at a mammoth gathering of a million of people at the Race-Course which marked a turning point in the history of the Bangali Nation. At the end of his speech, he declared:

প্রত্যেক ঘরে ঘরে দুর্গ গড়ে তোলো।তোমাদের যা কিছু আছে তাই নিয়ে শত্রুর মোকাবিলা করতে হবে.....প্রত্যেক গ্রাম, প্রত্যেক মহল্লায় আওয়ামী লীগের নেতৃত্বে সংগ্রাম পরিষদ গড়ে তোল এবং তোমাদের যা কিছু আছে, তাই নিয়ে প্রস্তুত থাকো। মনে রাখবা, রক্ত যখন দিয়েছি, রক্ত আরো দেবো। এই দেশের মানুষকে মুক্ত করে ছাড়বো ইনশাআল্লাহ। এবারের সংগ্রাম আমাদের মুক্তির সংগ্রাম, এবারের সংগ্রাম স্বাধীনতার সংগ্রাম। জয় বাংলা।

In the meantime, President Yahya Khan and other leaders from West Pakistan came to Dhaka on 15<sup>th</sup> March to start a dialogue with the Bangabandhu and his party. The dialogue began on the following day and continued till 25<sup>th</sup> March morning. During this period, non-cooperation and hartals were continuing in East Pakistan. General peoples, students and leaders of various political parties had been subjected to torture and murder by the then occupied army from 2<sup>nd</sup> March, 1971. Against this backdrop, at mid-night of 25<sup>th</sup> March 1971, the Pakistan army launched its brutal crackdown in different areas of Dhaka City including the University of Dhaka killing students, teachers and innocent people and raping women in

the name of operation searchlight. Bangabandhu Sheikh Mujibur Rahman was arrested on the night of 25<sup>th</sup> March, 1971 and was kept confined at Dhaka Cantonment until he was taken to West Pakistan for facing trial for 'sedition' and inciting insurrection. Before his arrest, Bangabandhu sent a wireless message to the peoples of Bangladesh, declaring the Independence of Bangladesh, which reads as follows:

### **DECLARATION OF INDEPENDENCE**

*"This may be my last message, from today Bangladesh is independent. I call upon the people of Bangladesh wherever you might be and with whatever you have, to resist the army of occupation to the last. Your fight must go on until the last soldier of the Pakistan occupation army is expelled from the soil of Bangladesh and final victory is achieved."*

[Message embodying Declaration of Independence sent by Bangabandhu Sheikh Mujibur Rahman to Chittagong shortly after midnight of 25<sup>th</sup> March, i.e. early hours of 26<sup>th</sup> March, 1971 for transmission throughout Bangladesh over the ex-EPR transmitter.]

At the call of the undisputed leader of the then East Pakistan Bangabandhu Sheikh Mujibur Rahman as made on 7<sup>th</sup> of March 1971 and the declaration of the Independence of Bangladesh, a large section of youths from all works of life being inspired by the said call and declaration of the

Independence by Bangabondhu and out of patriotic feeling they joined the Great Liberation War dedicating their heart and soul for liberation of the then East Pakistan (Bangladesh) from the clutch of Pakistani regime. On 10<sup>th</sup> April 1971, during our war of liberation Bangabandhu was made the First President of the Government of Bangladesh namely Mujibnagar Government by the people's representatives, while he was in the prison of the Pakistani regime. He was also made the Supreme Commander-in-Chief of the Bangladesh Armed Forces. Throughout the period of the War of Liberation, Sheikh Mujib's charisma worked as the source of inspiration for freedom fighters and for national unity and strength of the Bengali peoples. After 09 (nine) months of struggle and facing a very powerful and well equipped and brutal Pakistani army and their local collaborator i.e. Razakars, Al-Badrs and Al-Shams, the peoples of Bangladesh, freedom fighters and allied forces achieved their goal, liberating the country on 16<sup>th</sup> December, 1971 and during liberation more than two lac of young freedom fighters and thousands of Indian army dedicated their life at the war field. Pakistani Army and their local collaborator namely Razakars, Al-Badrs and Al-Shams committed genocide by killings of an estimated 3,000,000 (three Million) innocent and unarmed people. They operated concentration camps and used rape as weapon of war. Pakistani forces raped between 200,000 (two lacs) and 400,000 (four lacs) Bengali women and girls in a

systematic campaign of genocidal rape and the Nation suffered serious consequences of war very badly, brutal pakistani army and their local collaborator were destroyed all most everything, people's houses were burnt down, properties were damaged, consequently, they lost their livelihood. In the meantime, after a kangaroo trial by the Pakistani junta, Bangabandhu was awarded sentence to death. However, after the liberation of Bangladesh, Bangabandhu Sheikh Mujibur Rahman was released from Pakistan jail, due to the pressure from the world leaders, especially the Prime Minister of India Smt. Indira Gandhi and he made a triumphant homecoming, arriving in Dhaka on 10<sup>th</sup> January 1972 via London and Delhi, in the midst of joy and jubilations throughout the country. Hundreds of thousands of people of all walks of life received him at the Tejgaon old Airport and accorded him a heroic welcome. With his homecoming, all uncertainties loomed around the leadership of the new republic was removed and as such, a Daily newspaper, The Guardian (published from London) in an editorial on 10<sup>th</sup> January, 1972 wrote that:

*“Once Sheikh Mujibur Rahman steps out at Dacca Airport the new republic becomes a solid fact.”*

Bangabandhu Sheikh Mujibur Rahman headed the first government of the post-liberation Bangladesh for a short period of time, three years and a half. Starting from scratch his

Government had to deal with countless problems of a war ravaged country and under his leadership the state-building and nation-building took off the ground covering all important fields including rebuilding of roads, railway, water transport and ports, communication network, established administration, educational institutions, restoring law and order, recovering illegal arms, rehabilitating the freedom fighters, saving lives of the people hostile to the War of Liberation from the public wrath, and most importantly, feeding the millions of hungry people and many others were the formidable challenges before his government. In spite of all these problems, he never faltered to enact a constitution, which he did within ten months. Most importantly, return of Indian allied forces was ensured within three months of liberation. In the meantime, as many as 140 countries recognized Bangladesh. Bangabandhu set forth the guiding principle of Bangladesh's foreign policy: "Friendship to all and malice to none". His Government had laid down the edifice of fundamental State Institutions covering all important fields. Considering these aspects of the matter, we are of the view that there was none like Bangabandhu Sheikh Mujibur Rahman in our history of Bengal or Bangladesh and that is the reason, he is the Father of the Nation and the Greatest Bengali of all time.

We also noticed that 10<sup>th</sup> April 1971, Government of Bangladesh namely Mujibnagar Government issued the Proclamation of Independence, which served as the first (interim) Constitution of Bangladesh. After independence, the East Pakistani members of Pakistan's federal and Provincial Assembly were transformed into members of the Constituent Assembly of Bangladesh which was constituted under the provision of the Provincial Constitution of Bangladesh Order, 1972. The first session of the Constituent Assembly was held in the Old Parliament House, (at present Prime Minister's Office), Tejgaon, Dhaka and the Constituent Assembly sat on several sessions and it also formed a committee of 34 members for drafting the Constitution of Bangladesh. The Constituent Assembly treating Bangabandhu Sheikh Mujibur Rahman as founder of Bangladesh and it is evident from the speech of a member of Constituent Assembly given in 4<sup>th</sup> Session of Constituent Assembly held on 19.10.1972 that the Assembly for showing respect towards Bangabandhu kept and preserved his portrait in the session room of the Constituent Assembly. Mr. Sree Suranjit Sen Gupta, a Member of the Constituent Assembly in his Speech correctly said that:-

....“আমি বিশ্বাস করি, “বঙ্গবন্ধু যতদিন প্রধান থাকবেন, ততদিন এ দেশের পরিষদের কাছে তাঁর মর্যাদা অক্ষুণ্ণ থাকবে; কিন্তু আগামী দিনের বাঙ্গালীদের প্রধানমন্ত্রী হিসাবে তাঁর সমালোচনা করার অধিকার এ দেশের বিরোধী দলের থাকবে। আর সেই সঙ্গে জাতির পিতা হিসাবে তিনি যতদিন অধিষ্ঠিত থাকবেন, ঐ

শুদ্ধেয় স্পীকার সাহেবের মাথার উপর ঐ ছবিটা জাতির পিতা হিসাবে ততদিন  
জাতির জাতীয় সম্পত্তি হয়ে থাকবে।”

Admittedly, after the unfortunate event of killing of Bangabandhu, the Father of the Nation and his other family members, on 15<sup>th</sup> August 1975, the anti-liberation forces in disguise of pro-liberation forces came to power and at that time, a notorious collaborator namely Shah Azizur Rahman became Prime Minister of newly born Bangladesh and all Pakistani notorious collaborators and war criminals came back to Bangladesh. During the period of 1975 to 1996, Bangladesh was ruled by such force that has some sort participation in killing of our Great Leader and the Father of Nation Bangabandhu Sheikh Mujibur Rahman or they had been patronizing the killers of Bangabandhu by providing them good position in the Government as well as in various Government offices in home and abroad. They all had a common intention to erase the name of Bangabandhu from the history of Bangladesh and during these periods, the portrait of the Father of Nation Bangabandhu Sheikh Mujibur Rahman was removed from all offices including the Parliament and during their realm it was treated as an offence to mention the name of Bangabandhu. In 1996, the 7<sup>th</sup> Parliamentary Election was held and the present Prime Minister and daughter of the Father of Nation Bangabandhu Sheikh Mujibur Rahman became the Prime Minister of Bangladesh, who for spreading the glory and

contribution of Bangabandhu Sheikh Mujibur Rahman in the freedom of Bangladesh and for showing respect for him enacted a law namely বঙ্গবন্ধু শেখ মুজিবুর রহমানের প্রতিকৃতি সংরক্ষণ ও প্রদর্শন আইন, ২০০১ and after enactment of the said Act, the portrait of Bangabandhu Sheikh Mujibur Rahman was displayed and preserved in every government/semi-government offices of Bangladesh. However, just after enactment of aforesaid Ain, 2001, the 8<sup>th</sup> Parliamentary Election was held and on 28<sup>th</sup> October, 2001, the political party namely BNP formed the Government and they just after assuming power repealed the বঙ্গবন্ধু শেখ মুজিবুর রহমানের প্রতিকৃতি সংরক্ষণ ও প্রদর্শন আইন, ২০০১ with a view to erase the name of our great leader and father of nation Bangabandhu Sheikh Mujibur Rahman from the history of Bangladesh. Next, the Bangladesh Awami League headed by the Hon'ble Prime Minister Sheikh Hasina M.P. assumed power in 2008 and got majority in the 9<sup>th</sup> Parliament and formed Government for the Session from 2009 to 2013 and after getting majority, the Government through Parliament amended the Constitution by inserting Article 4A with provision of preservation and display of the portrait of Bangabandhu Sheikh Mujibur Rahman and after insertion of aforesaid Article 4A in our Constitution, the portrait of Bangabandhu Sheikh Mujibur Rahman is preserved and displayed in all executive offices, different government and semi-government offices of the state except in the Court Rooms

and Sessions Room of Parliament. Before 15th August, 1975 the portrait of Bangabandhu Sheikh Mujibur Rahman was kept and displayed in the Sessions Room of Parliament, though there was no provision in any law to preserve and display the same, on the other hand, in spite of specific provision in Article 4A of the Constitution, the portrait of Bangabandhu Sheikh Mujibur Rahman was not kept and displayed in the Sessions Room of Parliament.

Learned advocate for the petitioner argued that since the Session Hall of Parliament wherefrom the function of the legislative organ is operated, so the very Sessions Hall of the Parliament is a legislative office of the Republic and as per the provision of Article 4A of the Constitution of the People's Republic of Bangladesh, the portrait of Bangabandhu Sheikh Mujibur Rahman ought to be displayed and preserved in the Sessions Hall of the Parliament.

We noticed that the legislative intension of insertion of Article 4A in our Constitution is to glorifying the contribution of Bangabandhu and his suffering, dreaming, architecting and implementing an independent Bangladesh for its peoples, which is the basic elixir of our Constitution and thereby display the portrait of Father of the Nation in all visible places inclusive to Government offices where Parliament Session Hall are included within the preview of said Article and as such, the

respondents shall be obliged by Constitution to display and preserve the portrait of Bangabandhu Sheikh Mujibur Rahman in the Session Hall of Parliament of Bangladesh, but the respondents for unknown reasons kept themselves silent in implementing the provision as enunciated in Article 4A of the Constitution which is illegal. The Article of 4A of the Constitution of the Peoples Republic of Bangladesh is reproduced in verbatim:

*“The portrait of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman shall be preserved and displayed at the offices of the President, the Prime Minister, the Speaker and the Chief Justice and in head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government and non-government educational institutions, embassies and missions of Bangladesh abroad.”*

On perusal of the records, it appears that in view of provision of Article 4A of our Constitution, the portrait of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman shall be preserved and displayed at the office of the Hon’ble Speaker and the Speaker, as a head of Legislative Organ of the State, who is elected from the members of Parliament under Article 74 of the Constitution to Chair all sessions of the Parliament and therefore, the Hon’ble Speaker is mainly elected for performing his/her duty as described in Article 74 of the

Constitution and the office of the Hon'ble Speaker means the Parliament Session Hall/Room (অধিবেশন হল) wherefrom the Hon'ble Speaker performs his/her legislative duties. However, we noticed that the portrait of Father of the Nation, Bangabandhu Sheikh Mujibur Rahman is preserved and displayed in the administrative office of the Speaker, but the same is not preserved and displayed in the legislative office of the Hon'ble Speaker and the same is clear deviation of provision of Article 4A of our Constitution. We find support of this contention in the case of **Subir Nandi Das versus Bangladesh reported in 73, DLR (2021),349** to which one of us is a party.

However, learned Attorney General submits that in compliance of the Court's order dated 18.08.2020, the Respondents had took necessary measures and steps to preserve and display the portrait of Father of the Nation, Bangabandhu Sheikh Mujibur Rahman in the Parliamentary Session /Hall room, the legislative office of the Speaker and the portrait of Father of the Nation, Bangabandhu Sheikh Mujibur Rahman had already been placed right behind the chair of the Hon'ble Speaker in the Sessions Hall (অধিবেশন হল) of Parliament (House of the Nation). Thus, it appeared that the respondents have already complied with the Court's order.

Before we depart, we appreciate the role of the respondents Government to comply with the Court's order so

far as it relates to the preservation and display the portrait of Father of the Nation, Bangabandhu Sheikh Mujibur Rahman in the Parliamentary Session/Hall room, the legislative office of the Speaker. We also appreciate the petitioner Mr. Subir Nandi Das and Mr. Md. Abdul Alim Miah (Jewel) learned Advocate for the petitioner and Mr. A. M Amin Uddin, learned Attorney General and Mr. Abdullah Al Mahmud, learned Deputy Attorney General for their dedication, important information and to assist this Court, for proper disposal of this Rule.

In view of the above discussions and documents submitted by the parties, we are of the view that the Rule has got much merit to succeed.

In the result, the Rule is made absolute. The respondents are directed to keep, preserve and display with honour and dignity, the portrait of the “Father of the Nation Bangabandhu Sheikh Mujibur Rahman” in the Sessions Hall (অধিবেশন হল) of our Great Parliament (the House of the Nation) as enunciated in Article 4A of the Constitution of the People’s Republic of Bangladesh.

There is no order as to cost.

Communicate the judgment and order at once.

**Sardar Md. Rashed Jahangir, J:**

I agree.