

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

WRIT PETITION NO. 2223 OF 2021  
IN THE MATTER OF:

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

IN THE MATTER OF:

Md. Suhel Amin

.... Petitioner

-Versus-

Government of Bangladesh and others

.... Respondents

Mr. Md. Khurshid Alam Khan, Advocate with  
Mr. Muhammad Abdul Halim Kafi and  
Mr. Md. Jahangir Hussain, Advocates

..... For the petitioner

Mr. K.M. Masud Romy, DAG with  
Mr. Md. Kamal Haider, A.A.G with  
Mr. Md. Faruk Hossain, A.A.G. and  
Ms. Shahla Sharafat Nezaad, A.A.G

... For the respondents

**Judgment on 15<sup>th</sup> June, 2023**

Present:

***Mr. Justice Mahmudul Hoque***

***and***

***Mr. Justice Md. Mahmud Hassan Talukder***

**Mahmudul Hoque, J:**

In this application under article 102 of the Constitution Rule Nisi was issued calling upon the respondents to show cause as to why the inaction of the respondent Nos. 2-4 in re-counting the vote/ballot should not be declared to have been made without lawful authority and is of no legal effect and why they should not be directed to re-count the vote/ballot papers of the Mayor election of the Polling Centres of (a) Centre No. 4,

Shibnagar Darul Quran Madrasha (Polling Centre), Ward No. 4, Kanaighat, Sylhet, (b) Centre No. 5, Fatahizol Government Primary School, Ward No.5, Fatahizol, Kanaighat, Sylhet and (c) Centre No. 6, Durlobpur Government Primary School, Durlobpur, Ward No.6, Kanaighat, Sylhet so far as it relates to Mayor of Kanaighat Pourashava Election, 2021 and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule Nisi, in short, are that, the petitioner is a popular and prominent social worker. The petitioner was a contesting candidate for the office of the Mayor of Kanaighat Pouroshova Election-2021 held on 14.02.2021, with the symbol “Jug”. The respondent No. 9 was contesting candidate for the post of Mayor, Kanaighat Pouroshova Election-2021 held on 14.02.2021 who was unofficially declared elected as Mayor of Kanaighat Pouroshova, allegedly showing the result that he got 146 (One hundred forty six) votes more than the petitioner.

The voters cast their votes in the elections for the said seat in 9(nine) polling centres set up by the Election Commission, including the Polling Centre (a) Centre No. 4, Shibnagar Darul Quran Madrasha, Ward No. 4, Kanaighat, Sylhet (b) Centre No. 5, Fatahizol Government Primary School, Ward No. 5, Fatahizol, Kanaighat, Sylhet (c) Centre No. 6, Durlobpur Government Primary School, Durlobpur, Ward No. 6, Kanaighat, Sylhet in the Kanaighat Pouroshova Election-2021.

The booths were opened for the voters at 8.00 A.M. and voting was closed at 4.00 PM. The counting of the votes started at 4.20 PM and was ended at 6.00 PM.

The polling agents and others informed the petitioner that he is going to win. After casting vote of polling centre No. 5, Fatahizol Government Primary School, a group of hoodlums of petitioner's opponent candidate suddenly thronged in the centre and snatched away the ballots and forced the petitioner's polling agents to leave the booth under threat. The hoodlums then filled in the ballots box by casting votes in favour of symbol "Nouka". The petitioner made complaint about this matter to the presiding officer verbally but he did not take any step.

The presiding officers (respondent Nos. 6-8) of the concerned polling centres in connivance with respondent No. 9 counted void and petitioner's votes in favour of the respondent No. 9. The respondent Nos. 6-8 did not hand over the signed copy of the result to the petitioner's agent. The petitioner's polling agent was also forcefully driven out from the polling centre and a conspiracy hatched against him to manipulate the votes in favour of the respondent No. 9. The petitioner's polling agents raised their voice regarding the manipulation but their efforts were in vain due to conspiracy by the opponent parties of the petitioner.

To utter shock and agony of the petitioner, it subsequently turned out that the presiding officer had manipulated/changed the result and handed over the manipulated/rigged statement to the respondent No. 5, the Assistant Returning Officer and Upazilla Election Officer, Kanaighat.

When the petitioner obtained a copy of the result he found that he got 3686 (Jug) votes and respondent No. 9 got 3832 (Nouka) votes. The respondent No. 9 was declared as a Mayor getting 146 (one hundred forty six) votes more than the petitioner.

Immediate after getting the information as to the election hacking, the pooling agent of the petitioner made complaint orally with the respondent Nos. 6-8 and also in writing to the Assistant Returning Officer, Kanaighat Pouroshova General Election, 2021 and Upazila Election Officer, Kanaighat, respondent No. 5 about the incident of manipulation/change of the result and requested the said respondents to make effective measure against the same.

On 16.02.2021 the petitioner went to the office of the respondent No. 4 with a complaint petition and also filed a complaint to the respondent No. 2, but the respondent No. 2 took no initiative to inquire into the matter and dispose of the complaint.

It is evident from the combined result sheets that except centre No. 5, Fatahizol Government Primary School, Fatahizol, Kanaighat, Sylhet 66% to 76% votes has been casted, in centre No. 5 Fatahizol Government Primary School, Fatahizol, Kanaighat 96% votes has been casted which is unbelievable. Total voters of this centre is 2711 out which 2491 valid votes were shown casted and it was shown that the respondent No. 9 got 1500 votes and the petitioner got 259 votes. However, Upazilla Statistic Officer, Kanaighat, Sylhet issued a certificate dated 16.02.2021 stating that 310 voters are living in middle east and 219 voters are dead. So, it is

clear from the certificate that there was rigging in the Centre No. 5, Fatahizol Government Primary School, Fatahizol, Kanaighat, Sylhet, because 529 voters are absent due to death and living abroad.

The Election Commission has not yet published any gazette notification of the result of the election of Kanaighat Pouroshova, Election-2021 as per Rule 43 of the Local Government (Pouroshova) Election Rules, 2010.

The petitioner is a very popular person in his locality. Local People of the Kanaighat Pouroshova wanted to elect him as a Mayor of the Kanaighat Pouroshova. Accordingly, they voted him and elected him as Mayor, but the respondent Nos. 6-9 in connivance with each other and the respondent No. 9 by using his power most illegally rigged the poll and showed that the petitioner has failed by 146 (one hundred forty six) votes and as such, a direction upon the respondent Nos. 2 and 4 is required by this Hon'ble Court to recount the ballots of the three centres stated hereinabove.

It is stated that, the provision for submitting a petition to the Election Tribunal as per Rule 55 of the Local Government (Pouroshova) Election Rules, 2010 within 30 days after publication of gazette notification under Rule 43 is not applicable to the petitioner and the petitioner has no scope to file any petition to the Election Tribunal. There being no other alternative or equally efficacious remedy provided by law, the petitioner is constrained to invoke the writ jurisdiction of this Hon'ble Court.

The respondent Nos. 6-8, the presiding officers acted illegally and without any lawful authority and breached their legal obligation to prepare and forward a correct and genuine result to the returning officer as per Rule 39(1)(gha) and 40(6) of the Local Government (pouroshova) Election Rules, 2010. Hence, the conduct of the said respondents to rig the election is illegal, malafide, as such, a direction is required by this Hon'ble Court upon the respondent Nos. 2-4 to dispose of the complaint filed by the petitioner according to the Section 41(5) of the Local Government (Pouroshova) Rules 2010.

None filed Affidavit-in-Opposition and appeared on behalf of the respondent, Election Commission.

Mr. Md. Khurshid Alam Khan, with Mr. Muhammad Abdul Halim Kafi and Mr. Md. Jahangir Hussain, learned Advocates appearing for the petitioner submit that the rule was issued on 23.02.2021 and in the rule issuing order, ad interim order of status quo as well as direction was issued upon the respondent Nos. 2-4 to maintain status quo in respect of publication of gazette notification and directed to recount the ballot papers so far as it relates to the Mayor only within 01(one) month. The respondent No. 9 who was illegally declared elected did not appear in the rule, but he preferred CPLA No. 974 of 2021 before the Appellate Division. In CPLA No. 974 of 2029, the order of stay granted by the Hon'ble Judge-in-Chamber was maintained till disposal of the Rule and observed that the rule be heard and disposed of by the High Court Division expeditiously.

He further submits that after obtaining stay from Hon'ble Judge-in-Chamber, the Election Commission hurriedly without waiting for disposal of CPLA published gazette notification which was kept concealed from the petitioner. However, when the CPLA was heard on 23.05.2021 the commission and respondent No. 9 did not disclose the fact of publication of the gazette. Consequently, the petitioner in one hand eagerly waiting for getting a favourable result in this rule and on the other hand lost opportunity to file election dispute before the Election Tribunal within time prescribed by law. Referring Annexure-'B' to the writ petition he submits that in Fatahizol Government Primary School centre total number of vote is 2711, out of which 2611 votes were shown as casted, resultantly, 96.31% of total votes has been shown casted. Upazilla Statistical Officer by a certificate issued on 16.02.2021 certified that in the aforesaid centre out of total voters, 310 were residing abroad and 219 found dead. Because of such situation, it is humanly impossible to cast 2611 votes out of 2711. Apart from other centres, when the Election Commission received an allegation of adopting unfairmeans in the election on the face of the result, ought to have stopped publication of the gazette notification before recounting of the votes.

He finally submits that the petitioner in total got 3686 votes and the respondent No. 9 got 3832 votes as shown. The deference between petitioner and respondent No. 9 is 146 votes. Had the commission on the prayer of the petitioner recounted the vote only of Fatahizol Government Primary School, the petitioner would have been declared elected, but the

Election Commission most unfortunately ignored all the allegations, for the reasons best known to them.

He submits that the Election Commission has jurisdiction/authority to stop casting of vote as well as publication of gazette notification under the law if it found that the contesting parties adopted unfair means in casting votes in their favour, but in the instant case in one hand the Election Commission remained mum and on the other hand quickly published gazette immediate after obtaining an stay order from the Appellate Division, as such, the act and conduct of the respondents seems to be unjust, questionable and made the petitioner helpless.

It is argued that because of pendency of this Rule as well as concealment of publication of the gazette notification, the petitioner did not get opportunity and scope to ventilate his grievance before the Election Tribunal by filing election petition within time prescribed under Rule 55 of the Local Government Election (Pouroshova Election Rules). As such, if the petitioner is not allowed to file election petition by condoning such delay giving opportunity, he will be deprived of getting justice.

Learned Deputy Attorney General and Assistant Attorney General appearing for the government submit that as per Election Rules after publication of gazette notification an aggrieved candidate is to file election petition before the Election tribunal as per Rule 55 of the Election Rules. Because of publication of gazette notification and holding office by the respondent No. 9, the Rule itself has become infructuous and the



petitioner is not at all entitled to get any relief, as such, the Rule is liable to be discharged.

Neither the respondent No. 9, nor respondent Nos- 2-8 appeared in the Rule and filed any Affidavit-in-Opposition, consequently, we have no scope to know about their stand in the instant Rule.

Heard the learned Advocates for the petitioner and the learned Deputy Attorney General and Assistant Attorney General for the respondent No. 1, government, have gone through the writ petition and the grounds setforth therein and all the annexures annexed thereto.

The petitioner contested in the election as one of the candidates for the post of Mayor, Kanaighat Pouroshova, Sylhet, held on 14.02.2021. Respondent No. 9 also contested as Mayor in the said election. In usual course the voters of the area cast their votes in the election in different centres. After casting of votes in different centres, the Polling Officers of the respective centres counted votes and in the maximum centres the petitioner got votes more than the respondent No. 9. In all the centres the vote casted is 66-76%, but in centre No. 5, Fatahizol Government Primary School the vote casted 96.31%, showing casting of total votes 2611 out of 2711 which is beyond probability and fraudulently shown, as appearing from report of the Upazilla Statistical Officer dated 16.02.2021, wherein, a total number of 529 voters found residing abroad and dead, but the difference of votes is only 146 between the petitioner and the winner Mayor, respondent No. 9. Before publication of the gazette the petitioner moved this writ petition and obtained the present Rule and order of status

quo and direction for counting the ballots. The added respondent No. 9 moved before the Appellate the Division against the order without filing any vokalatnama in the instant Rule and obtained an order of stay. Immediate after obtaining stay very hurriedly the respondent No. 9 managed to get the gazette notification published by the Election Commission even before filing of regular CPLA and hearing of the same. The Hon'ble Appellate Division by order dated 23.05.2021 observed that the ends of justice would be met if the rule itself is disposed of on merit by the High Court Division expeditiously maintaining order of stay granted by the Hon'ble Judge-in-Chamber till disposal of the Rule.

In this situation, the respondent, Election Commission and the respondent No. 9 ought to have appeared in the Rule and filed affidavit-in-opposition and got the rule heard and disposed of, but leaving the legal proceeding before this Court undisposed of and unattended by both the Election Commission and the respondent No. 9 with a view to frustrate the rule got the gazette notification published even they did not feel it necessary to contest this Rule bringing a clear picture by filing affidavit-in-opposition though the respondent No. 9 moved against the order of stay before the Appellate Division. The intention of the respondent is to make the rule infructuous by publishing gazette notification by swearing in oath to the respondent No. 9 and allowing him to hold office of the Mayor. Now the mater to be seen whether a person with the help of election conducting officers managed to get him elected by manipulation of election process and casting unusual votes in his favour leaving the

aggrieved person to knock the door of the court with grievances which subsequently made infructuous.

To appreciate the fact of the instant rule, we have gone through the annexures. From the result sheets we find that the petitioner is a potential candidate, he secured in total 3686 votes in nine polling centres. Out of nine polling centres in centre No. 1, Rampur Non-Government Primary School, total vote is 1804 out of which 1387 vote casted, in centre No. 2, Rampur Jamia Arabia Islamia Madrasha, total vote is 951, in remaining 7 centres, the vote casted is not more than 66-76%. Out of nine centres the petitioner Md. Suhel Amin got 3686 votes and the respondent No. 9 got 3832. The difference between two candidates is only 146 votes. In Fatahizol Government Primary School unusual casting of vote shown in the result sheet in which centre out of total voters, 310 are residing abroad and 229 are dead. Resultantly, 529 votes were not liable to be casted by the Pooling Officer.

Moreover, comparing with other centres no reasonable explanation is forthcoming why in a particular centre the vote has been casted 96.31%. Because of such anomalies from the face of the result sheet when the petitioner lodged a complaint with the Commission, it ought to have stayed the result and investigate the matter properly in accordance with law and after thorough investigation if the commission found the result okay, then can proceed with the publication of the result and gazette notification, but the jurisdiction and authority conferred by law upon the commission has not been applied by the commission throwing a potential

candidate to knock door to door with his grievance to have a favourable response.

Had the Election Commission took the matter into consideration and on the prayer of the petitioner investigated the allegation without any delay, the petitioner as one of the candidates for the post of Mayor would not have moved before this Court with this petition. Not only that, after filing of this writ petition and obtaining Rule and stay and direction the respondent No. 9 bypassing this Court and appearing by filing vokalatnama through Lawyer directly moved before the Appellate Division by filing CMP and obtained an order of stay. Without appearing before this Court by filing vokalatnama, how the respondent No. 9 managed to obtain the certified copy of the order to file CPLA before the Appellate Division. Because of filing CPLA against the order of this Court, it can be construed that the respondent No. 9 is well aware about pendency of the Rule and order of the Appellate Division to dispose of the rule expeditiously, but by any means after getting the gazette published he took oath and now holding the chair of Mayor without appearing before this Court and submitting any reply. If the system is allowed to go on we think that the very purpose for framing of law empowering the commission for conducting election would be futile as well as will put the aggrieved person into more more trouble.

When a matter is in seisin of the court for adjudication, the parties to the litigation ought to have waited for final decision of the court. In the instant case taking an opportunity of a technicality, the respondent No. 9

after getting the gazette published and taking oath basically denied and ignored the process of the court as well as tried to make the petitioner reliefless.

In this situation, we think that, since the Election Rules 2010 provides for filing election petition before the Election Tribunal within 30 (thirty) days from the date of publication of the gazette and the gazette in the instant subject matter has been published after passing stay order by the Hon'ble Judge-in-Chamber, the petitioner as per law is to file election petition before the Election Tribunal, but by this time the limitation for filing election petition has become over because of pendency of this Rule for years together.

In this situation, the petitioner is legally barred from filing election petition before the Election Tribunal and in the event of filing such application the respondent No. 9 and the Election Commission may take a ground of limitation. Considering such situation and a proceeding before this Court is pending for disposal, we think that unless an opportunity to the petitioner to ventilate his grievance before the Election Tribunal by filing election petition is given by condoning the delay whatever have been occurred because of pendency of this rule, the petitioner would be deprived of getting proper justice and the respondent No. 9 and other respondents would be encouraged in doing such misdeeds in future.

Considering this situation, we are inclined to afford an opportunity to the petitioner to ventilate his grievance before the Election Tribunal by

filing a properly constituted election petition by condoning such delay within 30(thirty) days from the date of receipt of this judgment.

With the above observations the Rule is disposed of, however, without any order as to costs.

The order of status quo granted at the time of issuance of the Rule Nisi stands vacated.

Communicate a copy of this judgment to the parties concerned.

If the petitioner filed an application before the Election Tribunal the Tribunal is directed to dispose of the election petition within shortest possible time preferably within 6(six) months giving top most priority

Md. Mahmud Hassan Talukder, J:

I agree.