

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 4895 of 2021

In the matter of:

An application under Article 102(2)
of the Constitution of the People's
Republic of Bangladesh.

-And-

In the matter of:

Md. Mahmudul Hasan

..... Petitioner.

Vs.

Bangladesh, represented by the
Secretary, Ministry of Law, Justice
and Parliamentary Affairs and others.

..... Respondents.

Mr. Ozi Ullah, Advocate with

Mr. Md. Ismail Hossain Bhuiyan, Advocate

with Mr. Md. Abul Kalam, Advocate

with Mr. Md. Omar Faruk, Advocate

.....for the petitioner

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Sayeda Sabina Ahmed Moli A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondent No. 1

Mr. M.K. Rahman, Senior Advocate with

Mr. Md. Shariful Islam, Advocate

... for the respondent No. 7

Heard on: 23.11.2022, 04.12.2022, 05.12.2022 and

judgment on: 08.12.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show
cause as to why the impugned Memo No. 91 dated 24.03.2021

(Annexure-I-1) signed by the Sub-Registrar, Tajuddin Sub-Registry Office, Bhola and Member Secretary of Nikah Registrar License Monjuri Upodesta Committee excluding the petitioner from the Panel dated 27.02.2021 (Annexure-I) and thereby recommending to grant license to respondent No. 9 in violation of Rule 6(6 Ka) of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” shall not be declared to have been done without lawful authority and is of no legal effect and also as to why the respondents shall not be directed to grant License of Nikah Registrar of 5 No. Shambhupur Union Parishad, Tajumuddin, Bhola to the petitioner as per Rule 6(6Ka) of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Md. Mahmudul Hasan son Md. Khurshed Alam and Fatema Begum Resident at village- Charkuralmara, Post Office- Khaserhat, Police Station- Tajumuddin, District- Bhola is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat Bhaban, Dhaka-1000, the respondent No. 2 is the Senior Assistant Secretary, Bichar Shakah-7, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat Bhaban, Dhaka-1000, the respondent No. 3 is the Inspector General of Registration, Paribahan Pol Bhaban, Dhaka, the respondent No. 4 is the District Registrar, Office of the District Registrar, Bhola, the respondent No. 5 is the Sub-Registrar, Tajumuddin Sub-Registry Office, Bhola, the respondent No. 6 is the

Chairman, Tajumuddin Upazilla Parishad, Bhola, the respondent No. 7 is the Upazilla Nirbahi Officer, Tajumuddin, Bhola, the respondent No. 8 is the Chairman, 5 No. Shambhupur Union Parishad, Tajumuddin, Bhola, the respondent No. 9 is Abu Sayed, Son of Md. Mosleh Uddin and Shahinur Begum, of Village- Shibpur, Post Office- Indranarayanpur, Police Station- Tojumuddin, District-Bhola, the respondent No. 10 is Md. Sohel, Son of Mosleh Uddin and Shahinur Begum, of Village- Shibpur, Post Office- Indranarayanpur, Police Station- Tojumuddin, District-Bhola and the respondent No. 11 is Md. Shahabuddin, Son of Md. Kazol and Bibi Moyful, Village- Gulokpur, Police Station- Tojumuddin, District- Bhola.

The petitioner's case inter alia is that the petitioner passed his Dakhil, Aleem, Fazil and Kamil in the years 2006, 2008, 2011, 2013 respectively with good results. That the father of the petitioner named Md. Khurshed Alam obtained the license of Nikah Registrar for the 5 No. Shambhupur Union Parishad, Upazilla- Tajumuddin, District- Bhola vide memo No. 262/Bichar-8/2 N-18/73 dated 07.05.1980. That attaining his age of 67 years the father of the petitioner Md. Khurshed Alam retired from the post of Nikah Registrar on 28.02.2020 and accordingly the District Registrar, Bhola vide an order dated 09.03.2020 handed over the charge of Nikah Registrar of 5 No. Shambupur Union Parishad to the Nikah Registrar of adjacent 2 No. Sonapur Union Parishad named Mr. Md. Kamal Mahmud. That thereafter the Sub-Registrar, ajuddin Sub-Registry Office being the member Secretary of Nikah Registrar License Upodesta Committee published a notice dated 29.10.2020 inviting interested candidates to

file application for getting license. That the petitioner has all academic qualifications to get the license of Nikah Registrar. During discharging the duty of Nikah Registrar the petitioner gave assistance to his father and he gathered huge practical knowledge about the duties and liabilities of Nikah Registrar. The father of the petitioner issued a certificate in this regard and the Hon'ble Member of Parliament Mr. Nurunnabi Chowdhury, Bhola-3 vide a letter dated 05.03.2020 also recommended the petitioner. That the license of Nikah Registrar is regulated under the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” (hereinafter stated as ‘the Rules-2009’). The said Rules were amended in the year 2013 vide S.R.O No. 330-AIN/2013. That the petitioner having had all required qualifications and experiences filed application dated 05.11.2020 to the said Upodesta Committee as per the said notice and he also participated in all the relevant selection processes arranged by the committee. The petitioner attained 4th position in the said selection process. It is to be stated here that the petitioner being the only competent son of retired Nikah Registrar is entitled to get priority in getting license and he also very much qualified than other candidates. But some members of the said Upodesta Committee being influenced by some candidates caused unnecessary delay in the said license granting process and thereafter the said members of the committee set the petitioner in 4th position though he did very well in all the steps of selection process. That as per Rule 6(6Ka) of the Rules 2009 the petitioner being the only competent son of retired Nikah Registrar is entitled to get priority in getting license. In the meeting of the Upodesta Committee

dated 27.02.2021 the committee also discussed the said matter. That thereafter the Sub-Registrar, Tojumuddin Sub-Registry office and Member of the committee in violation of the aforesaid Rule 6(6Ka) prepared a panel excluding the instant petitioner and including the respondent Nos. 9-11 and sent the said panel to the respondent No. 1 vide memo No. 91 dated 24.03.2021 with the recommendation to grant license in favour of the respondent No. 9. That the respondent No. 5 sent the said panel and memo without publishing the result in the notice board of his office, but the petitioner came to learn about the same and visited the office of the respondent No. 2 and collected all the relevant documents. Thereafter the petitioner filed an application dated 07.04.2021 before the respondent Nos. 1 and 2 requesting them to cancel the said panel and to issue license in his favour. That despite filing those applications the respondents did not yet cancel the aforesaid panel and did not yet take any steps. That the respondents did not yet grant any license. Hence the petitioner being aggrieved filed the instant writ petition.

Learned Advocate Mr. Oziullah along with Mr. Md. Ismail Hossain Bhuiyan, Advocate with Mr. Md. Abul Kalam, Advocate with Mr. Md. Omar Faruk, Advocate appeared for the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Ms. Syeda Sabina Ahmed Moli, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent No. 1, Learned Senior Advocate Mr. M.K. Rahman along with Mr. Md. Shariful Islam, learned Advocate appeared for the respondent No. 7.

Learned Advocate for the petitioner submits that the respondents in not granting the Nikah Registrar license to the petitioner committed illegality in as much as that they acted in violation of Rule 6(6Ka) of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” . He submits that Rule 6(6Ka) of the Bidimala clearly contemplate that in the event of death of any Nikah Registrar or his license being cancelled due to retirement whatsoever his son if any shall be given priority in obtaining license as Nikah Registrar. He submits that the eligibility which is stated in Rule 8 of the **বিধিমালা** the petitioner does have the eligibility and is not barred by any of the provisions of Rule 8. He argues that therefore Rule 6(6Ka) along with Rule 8 is applicable in the petitioner’s case but however the respondents totally ignored the clear provisions of the Rules and unlawfully granted the license to respondent No. 7. There was query from this bench regarding the prevalence of a panel contemplated under the provision of Rule 5 and Rule 6(5) and of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” which contemplate constituting a panel of 3(three) eligible applicants before granting a license. To this query he submits that since Rule 6(6Ka) expressly states that in absence of any of the conditions of Rule 8 (অগ্রাধিকার প্রদান করিতে হইবে) priority shall be given to the son of any retired or deceased Nikah Registrar therefore the provision of panel under Rule 5 and 6(5) takes a secondary position and not primary. He argues that in this case it is clear from Annexure-I that the respondents did not follow the clear provisions of Rule 6(6Ka) and unlawfully prepared the panel by

excluding the petitioner from the panel list. He concludes his submission upon assertion that therefore such exclusion of the petitioner is unlawful and in violation in Rule 6(6Ka) of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)”, therefore the Rule bears merits ought to be made absolute for ends of justice.

On the other hand learned Advocate for the respondent No.7 by way of affidavit in opposition opposes the Rule. He submits that although there is a provision in Rule 6(6Ka) to give priority to any son of any deceased or retired Nikah Registrar, nevertheless the clear provisions of Rule 5 and Rule 6(5) cannot be ignored. He submits that it is a settled rule of interpretation that a statute or rule whatsoever to be construed from its real perspective must be read as a whole and not isolatedly. Therefore Rule 6(6Ka) cannot be isolated from Rule 6 sub rule 5 and 6 including other provisions of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” to determine the eligibility of being granted license of Nikah Registrar. The learned Advocate for the respondent No. 7 draws our attention to Annexure-G which is the merit list featuring the name of candidates chronologically in accordance with their merit. He categorically points out that the petitioner Md. Mahmudul Hasan stood 4th as per the merit list. He submits that it is also clear from the materials that the other 3(three) whose name is prepared in the merit list of panel stood 1st, 2nd and 3rd respectively. He contends that by no stretch of imagination can it be contemplated that the law intended to exclude those who are higher in the merit list upon giving priority to one who is lower in the merit list.

He takes us to Rule 6(5) of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন)

বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” and submits that Rule 6 sub rule 5 expressly contemplate that the 3 (three) members’ of panel list and not more shall be prepared by the authority. He submits that therefore the respondents did not commit any illegality in preparing the panel list in accordance with the merit list and placing the name of the top three in the panel list. He reiterates that it would be absurd to presume that the merit list may be bypassed only to accommodate a son of any deceased or retired Nikah Registrar. He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

Learned A.A.G appeared for the respondent No. 1 and 2 also vehemently opposes the Rule. In course of his arguments she substantively supports the contention of the learned Advocate for the respondent No.7 both in law and fact. She concludes her submissions upon assertion that the Rule bear no merits ought to be discharged for ends of justice.

We have heard the learned Counsels, perused the application and materials on record before us. It is the petitioner’s contention that Rule 6(6Ka) provides for granting license to a son of any deceased or retired Nikah Registrar subject to satisfaction of Rule 8 of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” . Rule 6(6Ka) of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” is reproduced hereunder:

“৬(৬ক): যদি কোন সিটি কর্পোরেশন, পৌরসভা বা ইউনিয়ন পরিষদ এলাকার কোন নিকাহ রেজিস্ট্রারের মৃত্যু বা অবসরজনিত কারণে লাইসেন্সের কার্যকারিতার অবসান ঘটে তাহা হইলে উপ-বিধি(৪) এর অধীন নিকাহ

রেজিস্ট্রারের লাইসেন্স প্রদানের উদ্দেশ্যে প্রার্থী বাছাই এবং উপ-বিধি (৬) এর অধীন লাইসেন্স মঞ্জুরের ক্ষেত্রে সংশ্লিষ্ট নিকাহ রেজিস্ট্রারের পুত্র সন্তানকে, বিধি ৮ এর অধীন যোগ্যতা থাকা সাপেক্ষে, অগ্রাধিকার প্রদান করিতে হইবে।”

To ascertain this issue and to understand the intention of the law we have examined the other provisions including Rule (5) and Rule 6(5) of the বিধিমালা of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)”. Rule 5 of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” is reproduced below:

“৫। উপদেষ্টা কমিটির দায়িত্ব ও কার্যাবলী।- উপদেষ্টা কমিটির দায়িত্ব ও কার্যাবলী হইবে নিম্নরূপ, যথা-

(ক) এই বিধিমালার অধীন সরকার কর্তৃক নিকাহ রেজিস্ট্রারের লাইসেন্স মঞ্জুর করিবার উদ্দেশ্যে, প্রাপ্ত দরখাস্ত পর্যালোচনাপূর্বক তিনজন প্রার্থীর একটি প্যানেল প্রস্তুত করিয়া উহা সরকারের নিকট প্রেরণ; এবং

(খ) এই বিধিমালার উদ্দেশ্যে পূরণকল্পে, অন্য যে কোন কার্য সম্পাদন ও প্রয়োজনে, সরকারকে পরামর্শ প্রদান।”

Rule 6(5) of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” is reproduced below:

“৬(৫): উপদেষ্টা কমিটি প্রতিটি লাইসেন্সের বিপরীতে তিনজন প্রার্থী বাছাই করিবে এবং সংশ্লিষ্ট জেলা রেজিস্ট্রার বা সাব-রেজিস্ট্রার উপ-বিধি (৪) এর অধীন বাছাই সম্পন্ন হইবার পরবর্তী সাত দিনের মধ্যে সকল দরখাস্ত এবং প্রয়োজনীয় দলিলাদিসহ তিনজন প্রার্থীর প্যানেল সরকারের নিকট প্রেরণ করিবে।”

It is the petitioner’s contention that the respondents by not including the name of the petitioner in the merit list committed illegality under rule 6(6Ka) of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা,

২০০৯ (সংশোধিত-২০১৩)” . To ascertain these issues we have examined the other Rules of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” particularly Rule 5 and Rule 6(5) of the বিধিমালা. Upon perusal of Rule 5 it appears that there shall be an advisory committee whose duty shall be after assessment of the application to prepare a panel for the purpose of granting license of the Nikah Registrar. Rule 5 of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)” also clearly states the number of candidates in whose favour and whose name will be enlisted in the panel list which number shall be three(3). It is clearly stated that it shall be a panel of not more than 3(three) applicants. In continuation of this issue we have examined Annexure-G. From Annexure-G it clearly appears that the instant petitioner Md. Mahmudul Hasan stood 4th in the merit list. It is also clear that 3 other persons, including the respondent No. 7 are within the first three (3) in the merit list.

Our considered view is the whatever Rule 6(6ka) may provide for granting a license to a son of any deceased or retired Nikah Registrar such rule 6(6ka) however cannot not and shall not prevail under the clear provision of Rule 5 and 6(5) including other rules of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)”. Upon all reasonableness and upon examination of the law in our opinion it would be absurd to presume that those who are in the top three of the merit list may be excluded only because of an enabling provision in Rule 6(6ka) of the “মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ (সংশোধিত-২০১৩)”. In our considered opinion Rule 6 (6ক) being an enabling

provision the petitioner might have had a case if he was within the top three in the merit list. It is evident that such circumstance does not exist here and the petitioner stood 4th in the merit list. Therefore our considered view is that the respondents upon following the merit list and preparing the panel accordingly did not commit any illegality.

Under the facts and circumstances and foregoing discussions made above we do not find merits in this Rule.

In the result, the Rule is discharged without any order as to costs.

The order of stay granted earlier by this court is hereby vacated.

Communicate this judgment at once.

Kazi Zinat Hoque, J:

I agree.

Arif(B.O)