

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

**Writ Petition No. 13070 of 2021**

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Mst. Nelufa Khatun

....Petitioner

**Versus**

The Chief Election Commissioner  
Secretariat Election Bhaban, Agargaon,  
Sher-e-Bangla Nagar, Dhaka and others.

....Respondents

Mr. Tanoy Kumar Saha, Advocate

....For the Petitioner

Mr. Md. Rezaul Karim, Advocate

....For the Respondent No. 5-6

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S M Masud Hossain Dolon

Heard on: 20.11.2023, 26.11.2023

**Judgment on: 27.11.2023**

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the  
Rule Nisi was issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents  
to show cause as to why the order dated 18.12.2021  
passed by the Respondent No. 3 affirming the Order  
dated 12.12.2021 passed by the Respondent No. 4  
rejecting the nomination paper submitted by the

petitioner in order to participate in the ensuing election of Erendabari Union Parishad under Fulchhari Upazilla for the post of Member (সংরক্ষিত) of Ward No. 1 should not be declared illegal, unlawful arbitrary and thus is of no legal effect 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 in short, are that the petitioner was a contesting candidate in the election of Erendabari Union Parishad under Fulchhari, 2021 for the post of Member (সংরক্ষিত) of Ward No. 1 and duly presented her nomination paper before the Upazila election officer and returning officer, Fulchhari, Gaibandha who rejected the same under Rule 14(3)(Ka) of স্থানীয় সরকারী (ইউনিয়ন পরিষদ) নির্বাচন বিধিমালা-২০১০ on the ground that the petitioner was not attained the age of 25 years. Against this order dated 12.12.2021 passed by the Returning officer, petitioner duly filed an appeal before the District Election officer and Appellate Authority, Gaibandha who upon hearing the appeal rejected the same and affirming the order dated 12.12.2021 passed by the returning officer stating the same reason.

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Mr. Tanoy Kumer Saha learned Advocate for the petitioner submits that the petitioner was successfully rectified her date of birth for which the Returning officer rejected her nomination paper before filing an appeal in District Election Officer and Appellate

Authority, Gaibandha who affirming the Order dated 12.12.2021 passed by the Returning officer rejecting the nomination paper submitted by the petitioner in order to participate in the election of Erendabari Union Parishad under Fulchhari Upazilla for the post of Member (সংরক্ষিত) of Ward No. 1 shall liable to be declared as illegal, unlawful, arbitrary, malafide and without jurisdiction. He further submits that District Election Officer and Appellate Authority, Gaibandha utterly failed to understand the appeal is continuation of a proceeding and as the problem raised by the Returning officer was corrected before coming at the appellate stage, he could consider the same and hence wrongly rejected the nomination paper of the petitioner and as such the order is liable to be declared as illegal, unlawful, arbitrary, malafide and without jurisdiction.

On the otherhand Mr. Md. Rezaul Karim, Advocate for the added respondent no. 5 and 6 submits that the appellate authority scrutinized all relevant paper appended by the petitioner and rightly found that the writ petitioner was not eligible to contest in the election as per বিধি ১৪ এর উপবিধি ৩(ক) of স্থানীয় সরকার (ইউনিয়ন পরিষদ) নির্বাচন বিধিমালা, ২০১০ and therefore, the instant Rule Nisi may kindly be discharged. Learned Advocate further submits that as per section 26(1) (Kha) of স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯ a member candidate will not be eligible if she is not attained the age of 25

years old. That the instant writ petitioner was below 25 years old as per her original NID card hence the Rule is liable to be discharged.

We have perused the writ petition and all other relevant papers submitted by the petitioner in connection with the contents of this writ petition. It appears that the Rule 14(3)(Ka) of স্থানীয় সরকার (ইউনিয়ন পরিষদ) নির্বাচন বিধিমালা-২০১০ a person shall be eligible to be elected as chairman or member of a council if he/she has attained the age of twenty five years. In the instant writ petitioner Ms. Nilufa Khatun filed nomination on 06.12.2021 as per voter list her date of birth was 01.01.1997 and at the time of submission of nomination papers she was attained 24 years 11 months 9 days. Thereafter she filed an application on 08.12.2021 for correction of her date of birth and same was granted and rectified her dated of birth as on 01.11.1996 as she was attended age of 25 years but her nomination paper was rejected by the Returning officer on 12.12.2021. Admittedly according to her NID she was not attended age of 25 years but after filing her nomination paper she amended her date of birth and turned allegeable to attend the election and she filed her amended date of birth with her appeal. The question arises whether a candidate can amend her date of birth after declaration of election schedule we therefore perused the section 10 of the voter List Ain, 2009 which runs as follows:-

১০। ভোটার তালিকা সংশোধনঃ

বিভিন্ন নির্বাচিত সংস্থার নির্বাচনের সময়সূচী ঘোষণার তারিখ হইতে নির্বাচন অনুষ্ঠানের সময়কাল ব্যতিরেকে, অন্য যে কোন সময়, নির্ধারিত পদ্ধতিতে, প্রয়োজন অনুসারে নিম্নোক্তভাবে সংযোজন ও বিয়োজনপূর্বক ভোটার তালিকা সংশোধন করা যাইবে, যথাঃ-

- (ক) উক্ত তালিকায় এমন কোন যোগ্য ব্যক্তির নাম অন্তর্ভুক্ত করা, যাহার নাম অন্তর্ভুক্ত করা হয় নাই, যা যিনি ইহা প্রণয়নের পর বা ইহার সর্বশেষ পুনঃপরীক্ষার পর অনুরূপ উক্ত তালিকায় অন্তর্ভুক্ত হইবার যোগ্য হইয়াছেন; বা
- (খ) উক্ত তালিকাভুক্ত যে ব্যক্তি মৃত্যুবরণ করিয়াছেন বা যিনি অনুরূপ তালিকায় অন্তর্ভুক্ত হইবার সময় অযোগ্য ছিলেন বা অযোগ্য হইয়াছেন তাহার নাম কর্তন করা; বা
- (গ) যিনি বাসস্থান পরিবর্তনের কারণে নূতন ভোটার এলাকা বা, ক্ষেত্রমত, নির্বাচনী এলাকার অধিবাসী হইয়াছেন, পূর্বের ভোটার এলাকার বা, ক্ষেত্রমত, নির্বাচনীর এলাকা তালিকা হইতে তাহার নাম কর্তনপূর্বক নূতন নির্বাচনী এলাকায় বা, ক্ষেত্রমত, ভোটার এলাকার তালিকায় অন্তর্ভুক্ত করা ; বা
- (ঘ) ইহাতে কোন অন্তর্ভুক্তি, সংশোধন বা কোন ত্রুটি-বিচ্যুতি দূর করা।

It appears from voter List Ain, 2009 that a restriction is imposed upon Voter List that it cannot rectify after declaration of election schedule. The respondent no. 5 and 6 are also candidate as the writ petitioner by filing affidavit in opposition submitted that the writ petitioner with a view to correct her NID card making a false school certificate and managed to have her name and date of birth corrected. The Respondent annexed a certificate as annexure-4 where Headmaster of west Algarchar Government Primary School, Erendabari, Fulchhari, Gaibandha stated that writ petitioner never went to this school and also denied the issuance of the certificate to the petitioner. In this circumstance the respondent nos. 5 and 6 can take necessary action in proper court for adjudication to produce false document and corrected her date of birth. The Respondent nos. 5 and 6 ought to have file application before the Election Tribunal and could challenge the petitioner by using false school certificate amended her death of birth and attended the Election

and being elected. The certificate would be verified and examine by the Election Tribunal. The petitioner was participated the Election by the order of this court since the writ petitioner has already been elected as member of Ward No. 1 in Erendabari Union Parishad, Fulchhari Upazila and the election commission has proper authority to vacant her post after the Election Tribunal announced the verdict.

On the otherhand Respondent No. 5 and 6 have scope to file case or challenge the birth certificate in any other competent forum or court because there are different two date of birth certificates issued by the same Headmaster of the school which cannot verify and examine by this court.

Upon such, we are of the view that the matter became infructuous and there is no merit in this Rule.

In the Result, the Rule is discharged as being infructuous.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.