

Present:

Mr. Justice Mohammad Bazlur Rahman
and

Mr. Justice Md. Ruhul Quddus

Writ Petition No.4223 of 2004

Md. Hafizur Rahman and others

...Petitioners

-Versus-

Government of Bangladesh and others

...Respondents

Mr. Md. Zakaria Sarker, Advocate

... for the petitioners

Mr. S M Quamrul Hasan, A. A. G.

... for respondent No.1

Md. Mohammad Helaluddin

í for added respondent No.5

Judgment on 15.10.2012

Md. Ruhul Quddus,J:

This Rule *nisi* was issued calling in question a notification published in Bangladesh Gazette extraordinary dated 10.6.2004 being S.R.O. No.191 Ain/2004 communicated with a covering letter as contained in Memo No. Poura-3/Cha-Bi-Ga-36/98/674 dated 21.6.2004 signed by a Senior Assistant Secretary, Ministry of Local Government, Rural Development and Co-operatives (herein respondent No.3) curtailing ward Nos.8 and 9 from Nabinagar Municipality under Brahmanbaria district.

The petitioners are four businessmen, permanent residents and voters of Ward Nos.8 and 9 of Nabinagar Municipality. They were appointed as members of the pourashava to run the functions of Nabinagar Municipality immediately after it was established.

Facts leading to issuance of the Rule, in brief, are that the Government had declared some area of Nabinagar Sadar Police Station as urban area and published it in Bangladesh Gazette extra ordinary dated 28.6.1999 being S. R. O. No. 166-Ain/99 dated 23.6.1999. The areas were plot Nos.1-4073 of Mouza Nabinagar, plot Nos.1-4273 of Mouza Alamnagar, both under Nabinagar East Union; plot Nos.1-1250 of Mouza Ibrahim, plot Nos.1-1250 of Mouza Belanagar, both under Ibrahimpur Union; plot Nos.1-2490 of Mouza Narayanpur, plot Nos.1-1586 of Mouza Aliabad, plot Nos.1-285 of Mouza Majikara, all under Sreerampur Union of Nabinagar Police Station (annex-A).

The petitioners contended that the said declaration was duly made following the rules and procedure and inviting prior suggestion and objections by the Deputy Commissioner, Brahmanbaria. Subsequently the Government, after observance of all legal formalities declared Nabinagar Municipality to have been established comprising the said area by a notification dated 8.9.1999 with effect from 12.9.1999 (annex-B). Thereafter, the Ministry of Local Government, Rural Development and Co-operatives by its Memo No.Poura-2/Ward-6/99/1288(4) dated 20.9.1999 appointed Delimitation Officer and Assistant Delimitation Officer for division of wards of the newly established Nabinagar Municipality (annex-C). Accordingly they made draft publication of demarcation of wards by Memo No.743 (50) dated 3.11.1999 and invited written suggestion or objections thereto, if any, within 15 (fifteen) days from publication of the notice (annex-D).

Thereafter, the Government in the Ministry of Local Government, Rural Development and Co-operatives by its Memo No.Poura-3/ Chabi-Ga-36/ 98/ 128 dated 16.2.2000 appointed the Thana Nirbahi Officer, Nabinagar as

Administrator of the municipality and constituted a 25 (twenty-five) members committee to run its functions in the meantime (annex-E). The petitioners were appointed as members of the said municipal committee.

The Election Commission for Bangladesh published final voter lists of all the 9 (nine) wards of Nabinagar Municipality and its voters including the petitioners applied their voting rights in national election held in October, 2001.

At that stage, the District Administration of Brahmanbaria, on an application filed by some local people for curtailment of some area from the municipality, held an enquiry and sent the enquiry report to the Ministry for necessary steps (annexes F and F-1), upon which the Government published the gazette notification dated 10.6.2004 being S.R.O. No.191 Ain/2004 curtailing ward Nos.8 and 9 from Nabinagar Municipality and communicated the same with a covering letter as contained in Memo No. Poura-3/Cha-Bi-Ga-36/98/674 dated 21.6.2004 under the signature of a Senior Assistant Secretary, Ministry of Local Government, Rural Development and Co-operatives (annex-G). Challenging the said notification, the petitioners moved in this Court with the present writ petition and obtained the Rule with an order of stay.

During pendency of the Rule, the petitioners filed an application for direction upon the Government-respondent to include the wards in municipality according to the recommendation of Deputy Commissioner, Brahmanbaria as contained in Memo No.Stha: Sha: 6 (Gathan) 10/09-51 dated 3.2.2010 (annex J-2 to the application). The said application was kept in record and taken up for hearing along with the writ petition.

Mr. Md. Zakaria Sarker, learned Advocate appearing for the petitioners submitted that after observance of all legal formalities, some area of Nabinagar Sadar Police Station was declared as urban area in 1999 and thereafter Nabinagar Municipality was established comprising the said area including the area in question. Delimitation of wards was completed and final voter list was also published. Because of elevation of the area to municipality, economic and social conditions of the people and infrastructure of the area were developed. In such a position, the Government at the behest of a vested quarter took decision to curtail the wards from municipality with a malafide intention only to change the vote-balance of the newly constituted municipality. The Government in doing so did not give any public notice, did not consider the economic condition of the people of the area and their willingness to remain in the municipality. Subsequently on an applications filed by local people, the local Administration held further inquiry and recommended the wards to be included in municipality. It means that the decision of the Government was wrong.

Mr. S M Quamrul Hasan, learned Assistant Attorney General appearing for the Government-respondent initially tried to oppose the Rule by filing an affidavit-in-opposition. We brought into his notice the inquiry report and recommendation of the Deputy Commissioner to include the curtailed wards into pourashava again [annexes Z-Z(1) to the application]. In that event learned Assistant Attorney General took adjournment for necessary instruction about authenticity of the said documents and subsequently filed a supplementary affidavit-in-opposition affirmed on 14.10.2012 accepting those documents to be genuine. In the said supplementary affidavit it is stated that the present situation in terms of infrastructure, income and occupation of the people of the area in

question have been drastically changed. The Upazila Nirbahi Officer, Nabinagar held an inquiry, considered the changed circumstances and submitted a report dated 9.8.2011 with recommendation to include the curtailed wards in the municipality (annex-Y to the supplementary affidavit-in-opposition). On receipt of the said report, the Deputy Commissioner, Brahmanbaria by his Memo No.528 dated 9.8.2012 sent a recommendation to the Ministry to that effect (annex Y-1), in concurrence of which the Government is also considering to include the wards in municipality. But because of pendency of the Rule, the Government-officials are not in a position to take a final decision over the matter and as such the present writ petition should be disposed of to facilitate them to take a just and proper decision on the matter.

In reply, Mr. Zakaria Sarker submits that since the Government has already taken steps to address the grievance of local people and is considering to include the curtailed wards in municipality, the petitioners reasonably expect that the Government will do it in a proper way. Under the changed circumstances, the grievance of the writ petitioners does not remain in same condition as it was before.

Mr. Mohammad Helaluddin, learned Advocate for the added respondent though was present at the time of hearing, did not file any affidavit-in-opposition or make any submission to oppose the Rule.

We have considered the submissions of the learned Advocates and gone through the record including the application and supplementary affidavit-in-opposition, and the documents annexed therewith. It appears that during pendency of the Rule, local people of the wards in question made representation to the authority for inclusion of the curtailed wards in municipality again. The

authority held physical enquiry and recommended to include ward Nos. 8 and 9 in Nabinagar Municipality, and the recommendation is under strong consideration of the Government. The Municipality was established long before and a pourashava was functioning there. The subsequent curtailment of wards could not take place because of stay order passed by this Court and as a result the wards are still remaining with the municipality. With the passage of time, socio-economic conditions of the people and infrastructure of the area have also been developed.

Under the facts and circumstances, it is expected that the Government will decide the matter in accordance with law considering the recommendation made by the district administration and socio-economic conditions of the people. Since the Government itself is considering to include the curtailed ward Nos. 8 and 9 in Nabinagar Municipality i.e to retain the wards with the municipality, there is no more necessity to prosecute the case on the part of the writ petitioners. It is also desirable that in future the public functionaries will not curtail/include any area to disturb any stable municipality or union every when and then except in due process of law. Thus the Rule is disposed of with the above observations.

Mohammad Bazlur Rahman, J:

I agree.