

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. 57 of 2022

In the matter of:

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

-And-

In the matter of:

Md. Delowar Hossain

..... Petitioner.

Vs.

Bangladesh Election Commission,
represented by the Chief Election
Commissioner, Bangladesh
Election Commission and others.

..... Respondents.

Mr. Md. Golam Mostafa, Advocate

.....for the petitioner

Md. Abdul Aziz Miah Minto, Advocate

.. for the respondents Nos. 1 and 2.

Heard on: 13.06.2022, 19.06.2022, 26.07.2022

and judgment on: 27.07.2022.

Kashefa Hussain, J:

Supplementary affidavit do form part of the main petition.

Rule nisi was issued calling upon the respondents to show
cause as to why (i) the impugned letter vide letter No.
17.00.0000.025.50.006.18-320 dated 11.06.2018 issued by the
respondent No. 3 rejecting the petitioner's application for registration
of his political party "Bangladesh Karmoshangstan Andolon Party
(BKAP)" (Annexure-G) and (ii) the letter vide letter No.
17.00.0000.025.50.006.18-640 dated 26.12.2021 issued by the

respondent No. 3 rejecting the petitioner's review petition dated 02.12.2021 being receive serial No. 15972 (Annexure-H) shall not be declared to have been passed without lawful authority and is of no legal effect and as to why the respondent No. 1 should not be directed to register the political party “ Bangladesh Karmoshangstan Andolon Party(BKAP) of the petitioner immediately and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Md. Delowar Hossain Son of late Nazrul Haque and Shamsunnahar Haque, 2Ka/8, Ma Vila (2nd Floor), Nabab Habibullah Road, Shahbag, Dhaka is a citizen of Bangladesh.

The Respondent No. 1 is Bangladesh Election Commission, represented by the Chief Election Commissioner, Bangladesh Election Commission, Nirbachan Bhaban, Plot No. E-14/Z, Agargaon, Dhaka-1207, Bangladesh, respondent No. 2 is the Secretary, Bangladesh Election Commission, Nirbachan Bhaban, Plot No. E-14/Z, Agargaon, Dhaka-1207, Bangladesh, respondent No. 3 is the Deputy Secretary, Bangladesh Election Commission, Nirbachan Bhaban, Plot No. E-14/Z, Agargaon, Dhaka-1207, Bangladesh,

The petitioner's case in short is that Mr. Delowar Hossain became a popular figure and a youth icon for his role in the 2014 general election and always took a determined stand in favour of an inclusive general election. He also toured all over the country raising awareness, and gathering members adherent to his cause. Relying on this strength he launched his political party the “Bangladesh Karmoshangstan Andolon Party” (BKAP) in 12.05.2015. The address

of the petitioner as stated in the cause title is correct for the purpose of service of notices and process of court upon him. That on 30th October, 2017 the respondent No. 2 vide a public notice invited political parties desirous of obtaining registration under the representation of the People's order 1972 (hereinafter referred to as "order") read with Registration of Political Parties Rules, 2008 (hereinafter referred to as "The Rules") to submit their applications for registration by 31st December, 2017. The said public notice also stated that the respondent shall scrutinize the applications submitted during February, 2018 and publish a list of newly registered political parties in March, 2018. given the benefits of registration as per Section 90F of the order, be it permission to receive donations and grants, allotment of symbols , broadcasting and telecasting facilities of state, owned media or consultation with the respondent No.1. Registration is critical for a political party if the party is to participate in any parliamentary election. That the conditions for the registration of political parties are laid down in the order and Rules. That the petitioner submitted an application dated 27.12.2017 for registration of his political party, the said application was supported by several documents as evidence of fulfillment of the conditions laid down in section 90B and to prove that the application is not caught by the disqualification criteria in 90C of the Order and in the application submitting time there is not any such Branch of the petitioner party out of the country. That the respondents , despite clear stipulations in the public notice about the disposal of registration application within March failed to do so, keeping the petitioner in limbo as to the fate of

his application. Due to the illegal malafide inaction of the part of the respondents, the petitioner's political party could not participate in the Khulna and Gazipur City Corporation elections held in May and June, 2018, respectively. That the respondent No. 3 vide letter dated 11.06.2018 (hereinafter impugned letter dated 11.06.2018) informed the petitioner that upon scrutiny of the petitioner's application, it was found that the said application did not comply with Article 90C(1)(c) of Representation of the People's Order 1972 as stipulated in Rule 7(5) of the Rules, so the petitioner's application has been submitted to amend the fault and should be treated properly. That Article 90C(1)(e) of the order requires the following specific provision in the constitution of a political party. That the petitioner immediately took steps to comply and duly had the constitution of his party amended to include the provision required by Section 90C(1)(c) of the order. The said amendment was council of the petitioner's political party as required by Article 6 of the constitution of the petitioner's party. The petitioner even went one step further and also obtained a resolution of its amendment. The Superior Council and Central Executive Committee together comprised the National Executive Committee as per Article 6 of the Constitution of "BKAP". the amended constitution along with a copy of the aforesaid resolution was duly submitted to the respondents on 02.12.2021 and any organization of the "BKAP" abroad or in any country out of Bangladesh has been deleted from the constitution of "BKAP". That the petitioner after rectifying the only shortcoming in his application filed a review petition before the respondent No. 1 on 02.12.2021. That the respondent No. 3 vide

letter No. 17.00.0000.025.50.006.18-320 dated 11.06.2018 (hereinafter referred to as the impugned letter) for whatsoever reasons or motives rejected the petitioner's application and thereby refused registration of his political party. That after receiving the review application for registration of the petitioner party the respondents has been taking a negative view that there is no any such opportunity to consider the review petition so, the review petition was rejected and the rejection letter dated 26.12.2021 is annexed herewith. Hence the writ petition.

Learned Advocate Mr. Md. Golam Mostafa appeared on behalf of the petitioner while learned Advocate Mr. Md. Abdul Aziz Miah Minto appeared for the respondent Nos. 1 and 2.

Learned Advocate for the petitioner submits that the respondents most arbitrarily and unlawfully rejected the application for registration of the petitioner political party. He continues that by the impugned orders annexed hereto the respondents unjustly deprived the petitioner's political party from being registered under the provision of Representation of the People Order, 1972. He submits that initially there were some deficiency and lacuna in the petitioner's application. He agitated that however later on after instructions from the respondents the petitioner rectified and filled up the lacuna. Upon a query from this bench regarding the petitioner not full filling the requirements and instruction from the respondents within the prescribed time and thereby not following the Rules vide S.R.O No. 251 of 2008 of the Representation of the People Order, 1972, the learned Advocate for the petitioner submitted that the petitioner in

pursuance of the direction and order of the respondents amended the application and fulfilled the lacuna within the prescribed time. In this context he draws our attention to Annexure G which is the impugned order dated 11.06.2018 issued by the respondent No. 3. He submits that it is reflected in annexure G in the সূত্র above that the petitioner following the letter of the respondent dated 8.4.2018 however complied with the condition by their letter dated 22.04.2018. He submits that therefore Annexure G the impugned order in itself reflects that there is no legal non –compliance of the petitioner and that they rectified the mistake within 15(fifteen) days as per প্রজ্ঞাপন . He submits that therefore the refusal of the respondents to register the petitioner's political party is totally arbitrary and without application of mind.

He next draws our attention to Annexure F wherefrom he submits that even though the petitioner requested the respondents for review but the respondents most arbitrarily refused such application on the ground that there is no scope of review under the Rules pertaining to mistakes under Representation of the People Order, 1972. He submits that for sake of natural justice review ought to have been considered since the petitioner have rectified their flaws and mistakes and the petitioner ought to have been allowed to be registered as a political party.

He next submits that the respondents also by their conduct showed unjust discrimination between the petitioner and another person whose political party's registration was allowed even though in that case also the applicant's application initially suffered from flaws

and defects. He submits that although the petitioner's political party namely "Bangladesh Karmoshangstan Andolon Party (BKAP)" and the other political party which was registered namely Bangladesh Congress are on the same footing, but nevertheless the respondents clearly discriminated by their conduct. He agitated that therefore refusal by the respondents to register the petitioner's organization as political party under The Representation of the People Order, 1972 is a direct violation of infringement of fundamental rights of the petitioner and the Rule bears merits ought to be made absolute for ends of justice.

On the other hand learned Advocate for the respondent opposes the rule. He submits that none of the fundamental rights of the petitioner has been violated in the instant case. In support of his submissions he takes us to the বিধিমালা particularly to Rule 7(5), 7(6) and 7(7) of the বিধিমালা. He points out that Rule 7(5) of the বিধিমালা contemplates that if any lacunas or defects are revealed in the initial application in that event the prescribed time is within 15 (fifteen) days to amend any mistake or ত্রুটি to rectify /correct the mistake whatsoever that may have been initially found in the initial application. He next points out to Rule 7(7) of the বিধিমালা and submits that there is a mandatory consequential provision pertaining to requirements contemplates that if amendment is not done within 15(fifteen) days such application will be rejected. He submits that from Annexure-G and also from Annexure-H it is clear that the petitioner did not rectify/amend the constitution nor full fill the requirements within the prescribed time. He argues that although the petitioner subsequently

at a later time full filled the lacuna but however the terms of the S.R.O No.251- Ain/2008 dated 26th August, 2008 under the Representation of the People Order 1972 expressly mandate that any mistake, gap or lacuna in the application must be full filled within the statutory prescribed time that is within 15(fifteen) days. Upon a query from this bench arising from the petitioner's argument that annexure G issued by the respondent No. 3 reflects from the সূত্র above that the petitioner complied with the letter dated 8.4.2018, the learned Advocate for the respondent controverts such claim of the petitioner. He contends that the letter dated 22.04.2018 did not comply with the conditions as instructed by the respondents to amend the application. He submits that nowhere in the materials could the petitioner prove that he complied with the condition within the prescribed time of 15(fifteen) days. He next draws attention to annexure H issued by the respondent No. 3 and submits that Annexure H clearly reflects that although the petitioners were given 15(fifteen) days time to amend any mistake or lacuna they might have had in the application but however since the petitioners did not amend or full fill the conditions within the prescribed statutory time of 15 days, therefore the document could not be examined by the respondents. The learned Advocate for the respondent further contends that there is no discrimination in the conduct of the respondent in registration of Bangladesh Congress given that in that case, the other political party complied with the conditions within the prescribed statutory time of 15(fifteen) days and consequently the petitioner's case does not stand on the same footing as the other political party. He concludes his submission upon

assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Advocates for both sides, perused the application and materials on record. Upon perusal of the documents we do not find anything from the records which may indicate that the petitioner followed the instruction by the letter issued by the respondents to rectify or amend their application within the prescribed time of 15(fifteen) days. Nor does the সূত্র which is annexure-G reflect that the petitioner fulfilled the lacuna within the statutory time of 15 days. Our considered opinion is that fulfilling the conditions by way of amending the mistake later only does not full fill the terms of the S.R.O No. 251-Ain/2008 of the Representation of the People Order, 1972.

For our purposes parts of the Rules 7(5), 7(6) and 7(7) are reproduced hereunder:

“৭(৫)উপবিধি(১) এর অধীন যাচাই অন্তে কমিশনের নিকট যদি প্রতীয়মান হয়

যে, -

(ক) নিবন্ধনের জন্য কোন দরখাস্ত যথাযথভাবে পূরণ করা হয় নাই; বা

(খ) উক্ত দরখাস্তে Article 90B এর অধীন নিবন্ধনের শর্তাবলী পূরণ করা হয় নাই; বা

(গ) বিধি ৬ এ উল্লিখিত দলিলাদি দরখাস্তের সহিত সংযুক্ত করা হয় নাই-

তাহা হইলে কমিশন, দরখাস্তকারী দলকে অনূর্ধ্ব পনের দিনের মধ্যে প্রয়োজনীয় দলিলাদি সরবরাহ সহ অন্যান্য ত্রুটি সংশোধনের সুযোগ প্রদান করিয়া একটি পত্র প্রদান করিবে।

৭(৬) উপ-বিধি (৫) এ উল্লিখিত পত্র প্রাপ্তির পর দরখাস্তকারী দল প্রয়োজনীয় চাহিদা পূরণ করিলে কমিশন উপ-বিধি(২), (৩) ও (৪) এ বর্ণিত পদ্ধতি অনুসরণ করিয়া দরখাস্তটি মঞ্জুর বা না মঞ্জুর করিতে পারিবে।

৭(৭) উপ-বিধি (৫) এ উল্লিখিত সময়ের মধ্যে দরখাস্তকারী দল কোন পদক্ষেপ গ্রহণ না করিলে কমিশন উক্ত দলকে নিবন্ধনের অযোগ্য বিবেচনা করিয়া দরখাস্তটি নামঞ্জুর করিবে।”

Upon a plain reading of the Rules, Rule 7(5) shows that any *ত্রুটি* or mistake whatsoever or lacuna must be full filled within 15(fifteen) days of the instructions by way of a letter whosoever issued by the respondents. Rule 7(7) of the S.R.O also clearly mandate a consequential provision which contemplate that in the event of the concerned person who represents the political party whatsoever not having taken any step to amend the application within 15 days in that event, the application shall be rejected. Since our considered view is that the Representation of the People Order 1972 is a special amendment of law for purpose particularly for registration of political parties, therefore any rule enacted for the purpose is to be construed strictly. It is a settled principle of law that any statutory rule by way of special enactment of law the language and the intention of the provisions contained therein must be construed strictly.

It is evident that we do not find from the documents which are annexed hereto which may indicate that the petitioner complied with the initial order of the respondents and submitted the document within the prescribed time of 15(fifteen) days. Therefore, there is no scope to bypass the Rules in the S.R.O No. 251-Ain/2008 dated 26th August, 2008 under the Representation of the People Order, 1972.

Whole a consequential provision is contemplated in Rule 7(7) of the S.R.O therefore we cannot bypass the consequential provision enacted to address the particular issue.

Further we have drawn our attention to Annexure H issued by the respondent No. 3 dated 26.12.2021. The relevant portion of Annexure- H reproduced hereunder:

“অনূন্য দুই শত ভোটার সদস্য হিসাবে দলের তালিকাভুক্ত থাকিবার সমর্থনে প্রামাণিক দলিল সংযুক্ত না করায় উপরিউক্ত বিধি ৭ এর উপবিধি (৫) (গ) অনুযায়ী আপনার দলকে উপরিক্ত শর্ত পূরণের জন্য ১৫ দিন সময় দিয়ে পত্র প্রেরণ করা হয়। প্রেরিত পত্রের প্রেক্ষিতে উল্লিখিত শর্ত পূরণের সমর্থনে প্রয়োজনীয় প্রামাণিক দলিল ও তথ্যাদি প্রদান করতে ব্যর্থ হওয়ায় আপনার দলের মাঠ পর্যায়ের দপ্তরসমূহের অস্তিত্ব বা কার্যকারিতা যাচাই করা সম্ভব হয়নি। এ প্রেক্ষিতে বিধি ৭ এর উপবিধি(৭) অনুযায়ী নির্ধারিত পদ্ধতি অনুসরণ করে আপনার দলের নিবন্ধনের জন্য দরখাস্তটি না-মঞ্জুর করে নিষ্পত্তি করা হয়। বিধি অনুযায়ী আপনার দলের আবেদন চূড়ান্তভাবে ইতোপূর্বে নিষ্পত্তি করা হয়েছে।”

Although the petitioner claims that he complied with the conditions within the prescribed time of 15(fifteen) days but however from Annexure H it appears that the petitioner did not comply with the conditions within the prescribed time.

The petitioner made some other submissions which are disputed matters of fact and cannot be entertained in a writ petition. The learned Advocate for the petitioner cited a decision in the case of Ram Chandra Vs. Secy. to Govt. of W.B. reported in AIR(W.B)1964 page-265. We have perused the decision. However the facts and

circumstances of that decision and the facts and circumstances of the instant writ petition which is before us are absolutely different.

The petitioner also contended that the application for review ought to have been entertained by the respondent for ends of justice. We are of the view that since the S.R.O pursuant to order is a special statutory amendment for special purpose, and there is no scope of review in the S.R.O No. 251-Ain 2008 dated 26th August,2008 of the Representation of the People Order, 1972 therefore, we cannot entertain such argument of the petitioner.

Under the facts and circumstances and hearing of the learned Advocates for both sides, we do not find any merits in this Rule.

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

Communicate this judgment at once.

(Kashefa Hussain,J)

I agree

(Kazi Zinat Hoque,J)