

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique
-Chief Justice
Mr. Justice Md. Nuruzzaman
Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.190 OF 2007.

(From the judgment and order dated 02.05.2006 passed by the High Court Division in Writ Petition No.3759 of 2006).

Md. Abdul Karim. :Appellant.

-Versus-

Mohammad Musa Kazem and others. :Respondents.

For the Appellant. : Mr. Mohammod Hossain, Advocate instructed by Mr. Mohammad Ali Azam, Advocate-on-Record.

For Respondent No.1. : Mr. Md. Firoz Shah, Advocate-on-Record.

For Respondent Nos.2-5. : Not represented.

Date of Hearing. : **The 18th October, 2022.**

Date of Judgment. : **The 19th October, 2022.**

J U D G M E N T

Borhanuddin, J: This civil appeal by leave arose out the judgment and order dated 02.05.2006 passed by the High Court Division in Writ Petition No.3759 of 2006 disposing of the writ petition summarily directing the respondents to dispose of the writ-petitioners' representation and till such disposal not to give effect of the appointment to the appellant.

Facts relevant for disposal of the appeal are that the respondent no.1 herein as petitioner filed writ petition no.3759 of 2006 invoking Article 102 of the Constitution challenging memo no.Bichar-7/2N-10/79(Part)/238 dated 12.04.2006 issued by the writ-respondent no.3 appointing the respondent no.4 as temporary Nikah Registrar for the No.11 Fatehpur Union under Upazilla Hathazari, District Chattogram, in violation of Sub-Rule 3(A) of Rule 5 of the Muslim Marriages and Divorces (Registration) Rules, 1975 (hereinafter stated as 'the Rules, 1975'), contending inter alia, that the father of the petitioner was a Nikah Registrar of the Fatehpur Union who died on 24.11.2005 leaving the petitioner and a bereaved family; The petitioner being qualified to be appointed as Nikah and Talak Registrar made an application to the respondent no.1 for appointment of the Nikah Registrar for the Fatehpur Union in place of his deceased father which was received by the respondent no.3 on 06.04.2006; During pendency of the application, respondent nos.1-3 most illegally appointed the respondent no.4 as Nikah Registrar for the said Union in

violation of the Sub-Rule (3A) of Rule 5 of the Rules, 1975; Respondent nos.1-3 are under legal obligation to comply with the said provision of law and appoint the petitioner as Nikah Registrar; The petitioner being deprived of his legal right invoked the writ jurisdiction.

Upon hearing the learned Advocate for the writ-petitioner, a Division Bench of the High Court Division without issuing the Rule disposed of the writ petition with the following direction:

"In such circumstances no rule is called for. However, respondents are directed to dispose of the annexure-B to the writ petition in accordance with Sub-Rule (3A) of Rule 5 of the Muslim Marriages and Divorces (Registration) Rules, 1975 and till such disposal not to give effect of annexure-F to the writ petition which is appointment of respondent no.4 as Nikah Registrar, with the aforesaid direction this application is disposed of."

Having aggrieved, the writ-respondent preferred Civil Petition for Leave to Appeal No.691 of 2006 invoking Article 103 of the Constitution and obtained leave granting order dated 15.11.2007 on the following submissions made by the learned Advocate for the leave petitioner:

"Mr. Reza-E-Murshed Kamal, the learned Advocate appearing for the petitioner, submits that the High Court Division has passed an order detrimental to the petitioner by directing the Government not to give effect to the memo dated 14-04-2006 issued by the Ministry of Law, Justice and Parliamentary Affairs but this petitioner was not give an opportunity of being heard in spite of the fact that by making false statement in respect of respondent's qualification did not annex his academic certificate with the writ petition. He further submits that the District Registrar having appointed the petitioner as Nikah Registrar the memo dated 14-04-2006 issued by the Ministry (Annexure-F to the writ petition) has already been given effect to and therefore the order passed by the High Court Division is futile and liable to be set aside. He then submits that the writ petitioner having filed the writ petition by suppressing the material facts is guilty of bad conduct and is not entitled any remedy from this Hon'ble Court and therefore, the order of direction is liable to be set aside. He lastly submits that the writ petitioner has not yet earned eligibility to be appointed as a Nikah Registrar under Rule 6 of the Muslim Marriages and Divorces (Registration), Rules and therefore, the direction given by the High Court Division to dispose of the representation made by the writ petitioner is liable to be set-aside."

Consequently, instant civil appeal arose.

Mr. Mohammad Hossain, learned Advocate appearing for the appellant submits in line with the leave granting order.

Mr. Firoz Shah, learned Advocate appearing for the respondent no.1 supports the impugned judgment and order passed by the High Court Division.

Heard the learned Advocate for the respective parties. Perused the leave granting order and other papers/documents contained in the paper book.

It appears from the leave granting order that the learned Advocate for the leave petitioner submits that the writ-petitioner obtained ex-parte order from the High Court Division by suppressing his academic qualification. He further submits that the District Registrar having appointed the writ-respondent no.4 as Nikah Registrar vide memo dated 14.04.2006 issued by the Ministry has already been given effect to and therefore the impugned judgment and order passed by the High Court Division is liable to be set-aside.

It is apparent that the impugned judgment and order with direction passed by the High Court Division without affording any opportunity of hearing to the other side.

In view of the submissions made by the learned Advocate for the appellant and the nature of the impugned judgment and order, the only question requires to be decided as to whether the High Court Division was correct in passing the impugned judgment and order summarily without issuing any Rule and thus giving no chance of hearing to the other side i.e. the writ-respondents to place their version on the question of the direction granted by the High Court Division.

This Division in the case of *Md. Abdus Sobhan and another vs. Md. Abdus Sattar and others*, reported in 19 BLD (AD) 7, held:

"The impugned judgment and order is liable to be set-aside only on the ground that the whole relief was granted to the writ-petitioner without issuing any Rule upon the respondents which is not only per se illegal but perverse in the sense that it militates against common sense and natural justice."

Time and again this Division disproved summary disposal of a writ petition or revisional application under section 115 of the Code of Civil Procedure giving whole relief to the petitioner without issuing Rule and thus giving no opportunity to the other side of being heard.

However, it appears that the writ-petitioner filed an application for appointment as Nikah Registrar in place of his deceased father and during pendency of the application the writ-respondent nos.1-3 appointed the writ-respondent no.4 as temporary Nikah Registrar.

We strongly disprove and deprecate this sort of decision by the writ-respondents. If the writ-petitioner is not qualified under Rule 6 of the Rules, 1975 his application should be disallowed/rejected for lack of requisite qualification inasmuch as Sub-rule 3(A) of Rule 5 of Rules, 1975 runs as follows:

"Where the vacancy is caused due to the retirement or death of a Nikah Registrar, the Advisory Committee shall, in selecting candidates, give preference to the son, if any, of the Nikah Registrar retired or died, having requisite qualification."

(emphasis supplied by us)

From the language of Sub-rule 3(A) of Rule 5 of Rules, 1975 it is apparent that the candidate must have requisite qualifications which are enumerated in Rule 6 of the Rules, 1975.

However, in view of the nature of the impugned judgment and order, we are inclined to allow the appeal.

Accordingly, the civil appeal is allowed.

The impugned judgment and order dated 02.05.2006 passed by the High Court Division in Writ Petition No.3759 of 2006 is hereby set-aside.

However, the authority i.e. the respondent nos.1-3 is directed to appoint afresh Nikah Registrar for no.11 Fatehpur Union under the Upazilla-Hathazari, District- Chattogram, in accordance with law.

However, no order as to costs.

C.J.

J.

J.

J.