

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

**Writ Petition No. 5641 of 2020**

**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 :**

Salah Uddin Badal Welfare Foundation and another  
.....**Petitioners**

**-Versus-**

Government of People's Republic of Bangladesh,  
represented by the Secretary, Secondary and  
Higher Education Division, Ministry of Education,  
Bangladesh Secretariat Building, Ramna, Dhaka-  
1000 and others

.....**Respondents**

Mr. Mustafizur Rahman Khan, Senior Advocate  
Ms. Mehreen Hassan with  
Ms. Sumiya Ifrit Binte Ahmed with  
Mr. Shafayet Ahmed, Advocates  
.....**For the petitioners.**

Mr. Nawroz Md. Rasel Chowdhury, D.A.G. with  
Mrs. Afroza Nazneen Akther, A.A.G with  
Mrs. Anna Khanom (Koli), A.A.G with  
Mr. Al Mamun, A.A.G  
..... **For the respondent-government.**

**Heard on 06.11.2023; 08.11.2023; 04.12.2023 and 07.12.2023**  
**Judgment on 14<sup>th</sup> December, 2023.**

**Present:**

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice SM Masud Hossain Dolon

In this application under article 102 of the constitution, the Rule  
was issued on 15.09.2020 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why Memo No. College-1/Committee/Kum/1467 dated 05.01.2020 (Annexure-A) issued by respondent No. 04 rejecting the petitioner No. 02 application to allow the affairs of the “Begum Sufia Showkat College, Digirpara, Muradnagar, Cumilla” to be run by the petitioner No. 1 instead of the petitioner No. 02 should not be declared to be without lawful authority and of no legal effect and why the respondent Nos. 02 to 04 should not be directed to treat the petitioner No. 01 as the founder of “Begum Sufia Showkat College, Digirpara, Muradnagar, Cumilla” instead of the petitioner No. 02 and/or such other or further order or orders passed as to this Court may seem fit and proper.”

The least fact of the case for disposal of the Rule is the petitioner No. 01 is a foundation registered under the societies Registration Act 1860. Respondent No. 01 is the Secretary, Ministry of Education, Secondary and Higher Education Division, other respondent are the Government Officer of the Education Department and the authority of the College. The petitioner No. 02 established the College in 2013 as a philanthropic endeavor in the name of his mother on land transferred by him in the name of college by a registered deed dated 05.05.2013 with the intension that it will be set up by foundation having perpetual succession dedicating for the purpose so that even after his passing away, it could be looked after by the foundation. Lastly foundation has been established on 09.07.2019

under the Societies Registration Act. The funds required for establishing, maintaining and carrying out the activities of the college were primarily borne by the petitioner No. 02. The funds are now provided by the petitioner No. 01 foundation. It was the intension of the petitioner No. 01 that the petitioner No. 02 would replace the petitioner No. 01 as the founder of the college. The petitioner No. 02 who established the college is also the founder of the petitioner No. 01 and his Chairman. In a meeting dated 01.08.2019 of the Governing Body of the college, it adopted a resolution for the betterment of education it would be interest of the college as the petitioner No. 01 foundation is named as its founder. The petitioner No. 01 also adopted a similar resolution undertaking the responsibility of running the affairs of the college.

The petitioner No. 02 on the letterhead of the petitioner No. 01, made an application to the respondent No. 03 by a letter dated 06.10.2019 to allow the affairs of the College to be run by the petitioner No. 02. The petitioner No. 01 should be treated as the founder instead of the petitioner No. 02.

The respondent Nos. 02 to 04 have failed to appreciate that it is the person who is recorded as the founder of the college who himself has come up with the application so that his role is replaced by a foundation formed by him. On that view of the matter, in not considering and disallow such application, the respondents are acting in violation of his fundamental right under articles 38 of the Constitution Act. Being aggrieved by dissatisfied with the impugned

memo the petitioner filed this application. The learned Advocate for the petitioner submits that respondent Nos. 02 to 04 ought to be directed to treat the petitioner No. 01 as the founder of “Begum Sufia Showkat College, Digirpara, Muradnagar, Cumilla instead of the petitioner No. 02. As the respondent No. 02 is the founder in the absence of foundation. He established the College on the name of his Mother for the betterment of the College. The founders just want to re-place the name as foundation. There is no heard in first Rule that the founder cannot challenged the name of the founder and re-place the name of own foundation. Upon such he prayed for absolute the Rule. On the other hand the learned DAG Mr. Nawroz Md. Rasel Chowdhury submits that as per SRO No. 99 (আইন/২০০৯।- Intermediate and Secondary Education Ordinance, 1961 (E.P.Ord. No.XXXIII of 1961) এর section 39 এ প্রদত্ত ক্ষমতাবলে, সরকারের পূর্বানুমোদনক্রমে, মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, ঢাকা নিম্নরূপ প্রবিধানমালা প্রণয়ন করিল, যথা:-

১। সংক্ষিপ্ত শিরোনাম, প্রয়োগ ও প্রবর্তন।- (১) এই প্রবিধানমালা মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, ঢাকা (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠানের গভার্ণিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯ নামে অভিহিত হইবে।

He referred the regulation ২(ছ) as follows:

২(ছ) প্রতিষ্ঠাতা অর্থ মাধ্যমিক বা উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠান প্রতিষ্ঠাকারী কোন ব্যক্তি বা ব্যক্তিবর্গ, যিনি বা যাঁহারা সংশ্লিষ্ট শিক্ষা প্রতিষ্ঠান প্রতিষ্ঠার নিমিত্ত অনূন ১০ (দশ) লক্ষ টাকা নগদে বা চেকের মাধ্যমে কিংবা সম্মূলের স্বাবর সম্পত্তি সংশ্লিষ্ট শিক্ষা প্রতিষ্ঠানের অনুকূলে দান করিয়াছেন, তবে এই প্রবিধানমালা

বলবৎ হইবার অব্যবহিত পূর্বে বিদ্যমান মাধ্যমিক বা উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠানের গভার্ণিং বডি বা ম্যানেজিং কমিটি সংক্রান্ত কোন প্রবিধানমালা অনুযায়ী কোন ব্যক্তি বা ব্যক্তিবর্গ কোন বেসরকারি শিক্ষা প্রতিষ্ঠানের প্রতিষ্ঠাতা থাকিলে উক্ত ব্যক্তি বা ব্যক্তিবর্গ এই প্রবিধানমালার উদ্দেশ্যপূরণকল্পে, সংশ্লিষ্ট বেসরকারি শিক্ষা প্রতিষ্ঠানের প্রতিষ্ঠাতা হিসাবে গণ্য হইবেন;

There is no scope to re-place the name or change the name of founder.

We have perused the application and relevant papers the learned Advocate for the petitioner at the end of his submission submits that on the self same matter the same Board that is মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, কুমিল্লা allowed the petitioner to changed the name of founder which is annexure 'I' in the supplementary affidavit.

We have scrutinized the record and annexure papers and other relevant Rules of the Intermediate and Secondary Education Ordinance, 1961. It appears the writ petitioner filed a similar application before the Chairman মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, কুমিল্লা which is marked as annexure '1' and still pending before the Chairman of the Board.

It appears to us the matter is under the jurisdiction of the মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড since the application has been filed before the Chairman মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড it should be disposed of.

Considering all the matter we are of the view that the application filed the petitioner pending before the Chairman of the

Board should be disposed of. The respondents are directed to disposed the application within 06 (six) months.

Upon such the Rule is dispose of.

Communicate the order at once.

Mr. Justice SM Masud Hossain Dolon

I agree