

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

**Writ Petition No. 10435 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:**

Anowara Begum.

.....Petitioner.

-Versus-

Secretary, Ministry of Local Government and  
Rural Development, Secretariat Building,  
Shahbag, Dhaka and others,

..... Respondents.

Mr. Kazi Md. Mohsin, Advocate

.....For the petitioner.

Mr. Bepul Bagmar DAG with

Mr. Mohammed Rezaul Hoque AAG

.....For respondent No.1.

Mr. Muntasir Mahmud Rahman with

Mr. A.N.M. Ashiqur Rahman Khan, Advocates

.....For respondent Nos.2-3.

Mr. Arobinda Kumar Roy, Advocate with

Mr. Sajal Ahmed, Advocate

...For respondent No.7.

**Judgment on: 29.01.2024**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**And**

**Mr. Justice K M Zahid Sarwar**

**Md. Khasruzzaman, J:**

In the application under article 102 of the Constitution,  
on 14.11.2021 the *Rule Nisi* under adjudication was issued in  
the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order dated 08.11.2021 passed by the respondent No. 4 in Election Appeal No. 16 of 2021 dismissing the appeal and thereby affirming the order dated 04.11.2021 passed by the respondent No.6 cancelling the nomination paper of the petitioner for the post of Member (reserved Woman seat) of Ward Nos. 01, 02 and 03 (Old 01) of Kachpur Union Parishad Election-2021, Sonargaon, Narayangong (Annexures-F and F-1) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

At the time of issuance of the *Rule Nisi*, the operation of impugned order dated 08.11.2021 passed by the respondent No. 4 was stayed. And the respondent Nos. 2 to 6 were directed to accept the nomination paper and to allocate symbol to the petitioner to contest for the post of Member (reserved woman seat) of Ward Nos.01,02 and 03 (Old 01) in the Kachpur Union Parishad Election-2021.

Facts relevant for disposal of the *Rule Nisi*, in short, are that respondent No. 2 vide Memo No. 17.00.0000.079.41.039.21-371 dated 14.10.2021 published election schedule of Kachpur Union Parishad Election-2021,

Sonargaon, Narayangon fixing date for poll on 28.11.2021 (Annexure-A to the writ petition). On 28.10.2021 the petitioner submitted her nomination paper for the post of Member (reserved woman seat) of Ward Nos. 01, 02 and 03 (Old 01), Kachpur Union Parishad Election-2021, Sonargaon, Narayangonj (Annexure-B to the writ petition). On the day of scrutiny on 04.11.2021, respondent No. 7 made objection against the nomination paper of the petitioner stating that although the petitioner is a tax payer but she did not produce the same at the time of filing nomination paper. On scrutiny, respondent No.6 cancelled her nomination paper vide his order dated 04.11.2021 (Annexure-E to the writ petition). Then the petitioner filed Appeal No. 16 of 2021 before the respondent No. 4 against the cancellation of her nomination paper. The respondent No.4 after hearing the parties and on perusal of the materials on record vide his order dated 08.11.2021 dismissed the appeal and affirmed the cancellation order dated 04.11.2021 passed by the respondent No.6 (Annexures-F and F-1 to the writ petition).

Under such circumstances, the petitioner has challenged the aforesaid order dated 08.11.2021 passed by the respondent No. 4, Election Appellate Authority in Appeal No.16 of 2021 and obtained the *Rule Nisi* and an order of stay

and a direction in the instant writ petition vide order dated 14.11.2021.

Ms. Israt Jahan, another contestant of the said post (subsequently added as respondent No.7 in this writ petition) filed Civil Miscellaneous Petition No.613 of 2021 challenging the order dated 14.11.2021 so far it relates to ad interim order of stay and direction passed in Writ Petition No. 10435 of 2021 and obtained stay as prayed for from the Judge-in-Chamber of the Appellate Division vide its order dated 22.11.2021. By the said order, the Judge-In-Chamber also directed the concerned authorities not to publish Gazette Notification declaring the petitioner as Member for the post of reserved woman seat, Ward Nos. 01, 02 and 03 (Old 01), of the concerned Union Parishad. Subsequently, the respondent No. 7 filed Civil Petition for Leave to Appeal No.63 of 2022 before the Appellate Division. The Appellate Division after hearing the parties and on perusal of the impugned order and the order of the Judge-in-Chamber vide its judgment and order dated 07.03.2022 disposed of the civil petition with a direction to dispose of the Rule Nisi by this Bench and the order of stay and direction granted by the Judge-in-Chamber was extended till disposal of the *Rule Nisi*.

Respondent Nos. 2 and 3 filed *affidavit-in-opposition* denying the material allegations made in the writ petition and

contending *inter-alia* that on 04.11.2021 while the Returning Officer was scrutinizing the nomination papers in presence of everyone, another candidate made objection and submitted some documents to show that the petitioner is a taxpayer but she did not produce her tax certificate with the nomination paper. Consequently, on scrutiny her nomination paper was cancelled by the Returning Officer on 04.11.2021. Against that order, the petitioner filed Appeal No.16 of 2021 before the respondent No.4, the appellate authority who vide his order dated 08.11.2021 dismissed the appeal and upheld the order dated 04.11.2021 passed by the Returning Officer cancelling her nomination paper. Thereafter, the petitioner filed the instant writ petition and obtained the Rule. It is stated that while filing nomination paper the petitioner declared that she is not a taxpayer. But while filing appeal the petitioner admitted in the memorandum that she is a tax payer. In that view of the matter, the petitioner gave untrue statement while filing nomination paper regarding her income tax in the declaration form. As per provision of rule 48(2) of the Local Government (Union Parishad) Election Rules, 2010 it is incumbent upon a candidate to submit the income tax return if he or she is a taxpayer. As such, by filing declaration with untrue statement the petitioner has violated the provision of law and as such the Rule is liable to be discharged.

Respondent No. 7 filed affidavit-in-opposition with almost similar statements as of respondent Nos. 2 and 3. As such, those statements are not required to be restated. In addition this respondent No.7 stated that the petitioner willfully and deliberately gave wrong information on oath in the nomination paper which is a grave offence under the Oath Act and as such, cancellation of nomination and dismissal of appeal are lawful and hence, the Rule Nisi having no merit is liable to be discharged.

Mr. Kazi Md. Mohsin, the learned Advocate appearing on behalf of the petitioner submits that the petitioner is not a defaulter of income tax. Since the Returning Officer cancelled her nomination paper on 04.11.2021 on the ground of non submission of the last income tax certificate with the nomination paper, the petitioner filed appeal before the respondent No. 4 (appellate authority) enclosing income tax certificate for the year 2021-2022 to allow her to participate in the election. But the appellate authority while dismissing the appeal failed to understand the scheme of law and thereby committed illegality in law in passing the impugned order. Right of franchise is a constitutional right and in determining such right concerned authority should bear in mind that the provision of law is not always a decisive factor and as such, the respondent No. 4 appellate authority ought to have allowed

her appeal for ends of justice and as such, the respondent totally failed to appreciate the matter and consequently, dismissed the appeal which is not sustainable in the eye of law. He next submits that the petitioner is a freedom fighter and she was elected earlier as a Member. In placing the above submissions, the learned Advocate prays for making the Rule Nisi absolute.

Mr. Muntasir Mahmud Rahman, the learned Advocate appearing on behalf of the respondent Nos. 2 and 3 submits that admittedly, the petitioner gave untrue statement regarding her income tax in the declaration form at the time of filing nomination paper which is admitted by her in the memorandum of appeal filed before the respondent No.4. Referring to rule 48(2) of the Local Government (Union Parishad) Election Rules, 2010 Mr. Rahman further submits that it is incumbent upon a candidate to submit the income tax return if he or she is a taxpayer which she did not. As such, she has blatantly violated the aforesaid provision of law. Hence, the order of cancellation of nomination paper as well as dismissal of appeal against such order of cancellation is lawful and there being no merit in the Rule is liable to be discharged.

Mr. Arobinda Kumar Roy along with Mr. Sajal Ahmed, the learned Advocates appearing on behalf of the respondent No.7, initially by referring to section 181 of the Penal Code,

submits that willfully and deliberately giving false or wrong information on oath or affirmation to the public servant i.e. to the Returning Officer herein is a penal offence and her willful and deliberate false statement at the time of filing nomination paper has been proved by admitting herself in the memorandum of appeal. As such, the order of cancellation as well as order of dismissal of appeal is absolutely in accordance with law.

However, Mr. Arobinda Kumar Roy, the learned Advocate submits that cancellation or acceptance of a nomination paper is absolutely an election dispute which should be adjudicated upon by the Election Tribunal. Since the petitioner has alternative forum of remedy before the election tribunal against her cancellation of nomination paper, the writ petition is not maintainable and consequently, the *Rule Nisi* is liable to be discharged. In support of his contention, the learned Advocate relied on the decisions in the cases of **Rafiqul Alam (Md) Vs. Mustafa Kamal and others, 42 DLR(AD)137; Dr. Mohiuddin Khan Alamgir Vs. Government of the People's Republic of Bangladesh, 62 DLR (AD) 425 and Md. Iqbal Hossain Vs. Government of Bangladesh, represented by the Secretary, Ministry of Local Government, Rural Development and Co-operatives (LGRD) and others, 17 BLC(AD)42.**



We have considered the submissions of the learned Advocates of the respective parties and perused the writ petition and other papers annexed thereto as well as the law and decisions as referred to by the parties.

On perusal of the writ petition, it appears that on 28.10.2021 the petitioner submitted her nomination paper. As per election schedule, the nomination paper scheduled to be scrutinized on 04.11.2021. It appears that on the day of scrutiny, the nomination paper of the petitioner was cancelled on the ground of non submission of tax certificate with the nomination paper although she was a taxpayer. Subsequently, on appeal, the appellate authority also upheld the order of cancellation of the nomination paper passed by the Returning Officer.

Thereafter, the petitioner filed the instant writ petition by challenging the impugned order dated 08.11.2021 passed by the respondent No.4, appellate authority in Election Appeal No.16 of 2021 and obtained the Rule Nisi and ad-interim order of stay and direction vide order dated 14.11.2021 passed in this writ petition.

On perusal of Annexure-I to the supplementary affidavit, it appears that after receiving the order dated 14.11.2021 of this Court, the Returning Officer vide his order dated 17.11.2021 issued notification that the election would be held

on 28.11.2021 from 8.00 a.m. to 4.00 p.m.. But before the election could be held on the date fixed, another candidate named Israt Jahan filed Civil Miscellaneous Petition No. 613 of 2021 before the Appellate Division and the Appellate Division vide order dated 22.11.2021 stayed the operation of the order dated 14.11.2021 passed by the High Court Division along with a direction upon the concerned authorities not to publish Gazette Notification declaring the petitioner as Member for the post of reserved woman seat, Ward Nos. 01, 02 and 03 (Old 01) of the concerned Union Parishad. Thereafter, Civil Petition for Leave to Appeal No. 63 of 2022 was filed and the Appellate Division, after hearing the parties and on perusal of the impugned order and the order of the Judge-in-Chamber, vide its judgment and order dated 07.03.2022 disposed of the civil petition with a direction to dispose of the *Rule Nisi* by this Bench and the order of stay and direction granted by the Judge-in-Chamber was extended till disposal of the *Rule Nisi*.

Thereafter, said Israt Jahan has filed an application for being added as respondent No.7 in the instant writ petition which was allowed by order dated 12.04.2022. It appears that the election for the said post of Member of the concerned Union Parishad is still pending because of the order passed by the Appellate Division while disposing of the petition.

The issues before us are, whether the cancellation of nomination paper of the petitioner was in accordance with law and whether the cancellation of nomination paper can be challenged in the writ petition i.e. whether the writ petition is maintainable or not?.

Let us first take up the issue as to whether the cancellation of nomination paper was in accordance with law. We have already found that on the day of scrutiny on 04.11.2021, the nomination paper of the petitioner was cancelled on the ground of non submission of tax certificate with the nomination paper although she was a taxpayer. Subsequently, on appeal, the appellate authority also upheld the order of cancellation of the nomination paper passed by the Returning Officer. In the memo of appeal before the appellate authority, the petitioner admitted that she was a taxpayer and she had TIN number. Objection was made by the respondent No. 7, Ishrat Jahan, stating *inter alia* that the petitioner is a regular taxpayer but she did not give tax certificate while submitting her nomination paper and as such, she has given false information in the nomination form which may kindly be cancelled.

Now relevant question may arise as to whether the petitioner being a candidate was required under the law to file tax certificate at the time of submission of nomination paper.

We will have answer on this question of law if we go through the provision of rule 48(2)(3) of the Local Government (Union Parishad) Rules, 2010 which is quoted as under:

৪৮। সম্ভাব্য নির্বাচনী ব্যয় এবং উৎসের বিবরণী:

- (১) প্রত্যেক প্রার্থী মনোনয়নপত্রের সহিত তাহার নির্বাচনী ব্যয় নির্বাহের জন্য প্রয়োজনীয় তহবিলের সম্ভাব্য উৎস এবং ব্যয়ের সম্ভাব্য খাতসমূহ সম্পর্কে নিম্নবর্ণিত তথ্যসমূহ প্রদর্শনপূর্বক ফরম "চ" তে একটি বিবরণী রিটার্নিং অফিসারের নিকট দাখিল করিবেন, যথাঃ
  - (ক) নিজ আয় হইতে যে অর্থের সংস্থান করা হইবে উহার পরিমাণ এবং উক্ত আয়ের উৎস;
  - (খ) আত্মীয়-স্বজনের নিকট হইতে কর্জ করা হইবে বা দান হিসাবে পাওয়া যাইবে এইরূপ সম্ভাব্য অর্থ এবং তাহাদের আয়ের উৎস;
  - (গ) কোন প্রতিষ্ঠান বা সংস্থা হইতে স্বেচ্ছা প্রদত্ত দান বাবদ প্রাপ্য সম্ভাব্য অর্থ; এবং
  - (ঘ) অন্য কোন উৎস হইতে প্রাপ্য এইরূপ অর্থ এবং উক্ত আয়ের উৎস।  
[ব্যাখ্যা-এই উপ-বিধিতে "আত্মীয়-স্বজন" অর্থ স্বামী বা স্ত্রী, মাতা, পিতা, পুত্র, কন্যা, ভ্রাতা বা ভগ্নি।]
  - (ঙ) ফরম- 'চ' এর দ্বিতীয় ভাগে বর্ণিত যে সমস্ত খাতে প্রাপ্য অর্থ ব্যয় হইতে পারে উহার একটি খাতওয়ারী ব্যয়ের হিসাব।
- (২) উপ-বিধি (১) এর অধীন দাখিলকৃত বিবরণীর সহিত; প্রার্থী আয়কর দাতা হইলে, তাহার সম্পদ বিবরণী সম্বলিত সর্বশেষ দাখিলকৃত রিটার্ন এবং কর পরিশোধের প্রমাণপত্রের কপি সংযুক্ত করিতে হইবে।
- (৩) উপ-বিধি (১) এর অধীন দাখিলকৃত বিবরণীর কপি, উপ-বিধি (২) এ উল্লিখিত সম্পদ বিবরণী সম্বলিত রিটার্ন এবং কর পরিশোধের প্রমাণপত্রের কপি রিটার্নিং অফিসারের নিকট দাখিল করিতে হইবে।
- (৪) .....

On perusal of the aforesaid provision of rules, it appears that under sub-rule (1) each and every candidate has to

furnish information in the prescribed form regarding his or her approximate election cost and source of income at the time of submission of nomination paper. Under sub-rule (2) if the candidate is taxpayer he or she shall furnish last income tax return and tax certificate as a proof of payment of tax at the time of submission of the statement as required under sub-rule(1). Under sub-rule (3) the candidate shall furnish/submit copies of statement as required under sub-rule (1), income tax return and tax certificate with regard to payment of tax as required under sub-rule(2) with the Returning Officer at the time of submission of nomination paper. So, the petitioner being a candidate in the election was required under the law to furnish income tax return and tax payment certificate along with the statement of election cost and source of fund with the Returning Officer at the time of submission of her nomination paper. The petitioner candidly admitted in the memorandum of appeal filed before the appellate authority that she did not furnish any such income tax return and tax payment certificate. So, the objection was rightly made by the respondent No.7 while scrutinizing the nomination paper on 04.11.2021.

Power of scrutiny of nomination paper has been given upon the Returning Officer in rule 14 of the Local Government (Union Parishad) Rules, 2010. Under sub-rule (2) of rule 14

the Returning Officer at the time of scrutinizing nomination paper under sub-rule(1) shall dispose of the objection if any against any of the nomination papers. Under sub-rule (3) the Returning Officer has been given power to cancel any of the nomination paper upon scrutiny as required under sub-rule (1) and upon disposal of the objection if any.

The legal position of the case being as such as stated above, we do not find any illegality or irregularity in cancelling the nomination paper of the petitioner.

Now, whether the writ petition is maintainable. In this respect, we need to go through the decision of our apex Court specifically on this point.

In the case of **Dr. Mohiuddin Khan Alamgir Vs. Government of the People's Republic of Bangladesh, 62 DLR (AD) 425**, the Appellate Division held at paragraph 16 as follows:

*“Whether the writ petition is maintainable against any step in the election process stands well settled in view of the decisions reported in the case of AFM Shah Alam Vs. Mujibul Huq reported in 41 DLR(AD)68, in the case of Mahmudul Haque (Md) Vs. Md. Hedayetullah reported in 48 DLR(AD)128 and in the case of AKM Mayeedul Islam Vs. Bangladesh Election Commission reported in 48 DLR(AD)208. It is well settled that writ petition under*

*article 102 is not maintainable against any step in the process of election like acceptance or rejection of nomination paper of a candidate.”*

Again in the case of **Md. Iqbal Hossain Vs. Government of Bangladesh represented by the Secretary, Ministry of Local Government, Rural Development and Co-operatives (LGRD) and others, 17 BLD(AD) 42** it has been held at paragraph No. 13 as follows:

*“The term ‘election’ includes the whole election process passing through several stages and a dispute in any stage is an election dispute which can be challenged and determined only by an election petition after conclusion of the final stage of the process. Law does not contemplate intervention of any Court during any intermediate stage of the election process. To allow Court’s intervention will hinder the process of election which is the basis of running a democratic institution.”*

It has further been held in the said case at paragraph No.14 as follows:

*“Having considered all aspects of the case, we are of the view that the acceptance of the nomination paper of the writ petitioner should be deemed a provisional acceptance. Therefore, anybody aggrieved by the acceptance of the*

*nomination paper of the writ petitioner may go to the election tribunal.”*

Having gone through the above quoted decisions we are of the view that acceptance or rejection of nomination paper of a candidate is an election process and if anybody is aggrieved against any step of either acceptance or rejection of his or her nomination paper has to move before the election tribunal not under writ jurisdiction. In that view of the matter, we have no option but to subscribe the same view as has been held by the Appellate Division. So, we of the view that the writ petition is not maintainable for want of jurisdiction as well as it has no merit in the eye of law.

Accordingly, the Rule Nisi is discharged. The order of stay and direction granted earlier is hereby cancelled and vacated.

There will be no order as to costs.

**K M Zahid Sarwar, J.**

I agree.