

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. 11069 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:

Md. Nazrul Islam and others
..... Petitioners.

Vs.

Government of the People's
Republic of Bangladesh and
others.

.....Respondents.

Mr. Ruhul Quddus Patwary, Advocate

.....for the petitioners

Mr. Md. Ashraful Alam, Advocate

.. for the respondents No. 1.

Mr. Noor Us Sadik, D.A.G with

Mr. Prahlad Debnath, A.A.G

Mr. Md. Hafizur Rahman, A.A.G with

Ms. Farida Parvin Flora, A.A.G

.... for the respondent Nos. 2-13

Mr. Md. Aktaruzzaman, Advocate

.... for the respondent Nos. 14-41

Heard on: 01.08.2022, 04.08.2022 and

judgment on: 07.08.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show
cause as to why the impugned Appointment Notice under Memo No.
46.42.1300.030.04.008.21-556 dated 07.09.2021, issued under the

signature of the respondent No. 6, inviting application for appointment of Union Parishad “Accounts Assistant Cum-Computer Operator” (Annexure-T) should not be declared to be without lawful authority and is of no legal effect and as to why the respondents should not be directed to absorb/transfer the service of the petitioners to the revenue budget and regularize their service under the revenue budget with regular appointment as “Accounts Assistant Cum-Computer Operator” in the respective Union Parishad with salary and all other benefits from the date of their original agreement of appointment and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No. 1 Md. Nazrul Islam along with 27 others are all citizens of Bangladesh having permanent addresses shown in the cause title of the Writ petition.

The respondent No. 1 is the Secretary, Ministry of Local Government, Rural Development and Co-operatives, Local Government Division, Bangladesh Secretariat Building, Shahbagh, Dhaka-1000, respondent No. 2 is the Secretary, Ministry of Establishment Bangladesh Bridge Division, Bangladesh Secretariat Building, Shahbagh, Dhaka-1000, respondent No. 3 is the Secretary, Ministry of Information and Technology, Bangladesh Secretariat Building, Shahbagh, Dhaka-1000, respondent No. 4 is the Secretary, Ministry of Finance, Bangladesh Secretariat Building, Shahbagh, Dhaka-1000, respondent No. 5 is the Deputy Secretary, Ministry of Local Government, Rural Development and Co-operatives, Local Government Division, Bangladesh Secretariat Building, Shahbagh,

Dhaka-1000, respondent No. 6 is the Deputy Commissioner, Chandpur, respondent No. 7 is the Upozilla Nirbahi Officer, Upozilla-Motlab South, Chandpur, respondent No. 8 is the Upozilla Nirbahi Officer, Upozilla- Kachua, Chandpur, respondent No. 9 is the Upozilla Nirbahi Officer, Upozilla- Haimchor, Chandpur, the respondent No. 10 is the Upozilla Nirbahi Officer, Upozilla-Hajigonj, Chandpur, respondent No. 11 is the Upozilla Nirbahi Officer, Upozilla-Motlab North, Chandpur, respondent No. 12 is the Upozilla Nirbahi Officer, Upozilla- Shahrasti, Chandpur, respondent No. 13 is the Upozilla Nirbahi Officer, Upozilla- Faridgonj, Chandpur and the added respondent Nos. 14-41 are the citizens of Bangladesh having permanent addresses shown in the cause title of the Writ petition.

The petitioners case inter alia is that all the petitioners have the requisite to be appointed in the post of “Accounts Assistant Cum-Computer Operator” in the concerned Union Parishad and are also entitled to be absorbed/transferred in service to the revenue budget and regularize their service under the revenue budget with regular appointment as “Accounts Assistant Cum-Computer Operator” in the respective Union Parishad with salary and all other benefits from the date of their original agreement of appointment. The petitioners in the writ petition stated their qualification in separate para and they also claim that they joined in the concerned Union Parishad . That since the date of their joining in the said capacity as Entrepreneur of Union Digital Centre (UDC) the petitioners have been working till today in their respective union as Account Assistant Cum-Computer Operator. That the petitioners and others by working hard made the largest web

portal in the world and they are also giving benefits of information technology to the people of Bangladesh. In this way they are executing the Digital Bangladesh program and for that reason World Summit for Information Society (WSIS) gave award to the Government of the people's Republic of Bangladesh in the year of 2014-2015. That although the petitioners are serving in the said capacity with full satisfaction of all the concerned authorities, all on a sudden the respondent No. 6 published appointment notice on 07.09.2021 by memo No. 46.42.1300.030.04.008.21-556 dated 07.09.2021 and accordingly petitioners applied for the said post. Written examination and interview card was issued in favour of the applicants except these petitioners. That written examination of the said post of "Accounts Assistant Cum-Computer Operator" would be held on 26.11.2021. That the petitioners have crossed the limit of age to get Government Job. If the Government appoints anybody instead of the petitioners the petitioners will face serious hardship with their family members. That most of the petitioners have served for more than 5 years in the project and it is the legitimate expectation of the petitioners to be absorbed in the revenue budget with effect from the date of their joining. That petitioner No. 1 and another filed an application to the respondent No. 6 praying to give priority to them by reducing conditions on 11.11.2021 with a list of entrepreneur and an amended circular issued by Deputy Commissioner, Borguna. That in identical matter writ petition has been filed before the High Court Division and thereafter Rule was disposed of by judgment and order and against the said judgment civil petition No. 3607 of 2017 and

Civil Petition No. 452 of 2018 have been filed and the Appellate Division disposed of the said Civil Petitions with observation on 10.12.2017 and 05.02.2018 respectively. Therefore the petitioner's case is that the respondent invited for an application for appointment of Union Parishad post of "Accounts Assistant Cum-Computer Operator" issued by the respondent appointment notice under memo No. 46.42.1300.030.04.008.21-556 dated 07.09.2021 is without lawful authority, hence the petitioners filed the writ petition.

Learned Advocate Mr. Ruhul Quddus Patwary appeared on behalf of the petitioners while learned Advocate Mr. Md. Ashrafal Alam appeared for the respondent No. 1. Larned D.A.G Mr. Nood Us Sadik appeared for the respondent Nos. 2-13 and Mr. Md. Akteruzzaman, learned Advocate appeared for the respondent Nos. 14-41.

Learned Advocate for the petitioners submits that the impugned noticed issued by the respondents are without lawful authority. In elaborating his submission he asserts that all the petitioners have been working in the concerned Union Parishad since several years and they have already crossed the age limit for application for other government jobs. He agitates that therefore since the petitioner have been working under the Union Parishad since several years, it is a legitimate expectation and fundamental right of the petitioners that their services be absorbed to the revenue budget in the post of "Accounts Assistant Cum-Computer Operator" in the respective Union Parishad. He submits that although the petitioners have been serving in the Union Parishad since several years therefore it is the

respondent's duty to absorb them in the revenue budget. He agitated that however the respondents without affording any chance to the petitioners to regularise their service under the revenue budget issued the impugned appointment notice for application in the post of "Accounts Assistant Cum-Computer Operator". He concludes his submission upon assertion that the impugned memo depriving the petitioners of their fundamental right to regularize their service is unlawful and the Rule bears merits ought to be made absolute for ends of justice.

On the other hand learned Advocate for the respondent No. 1 vehemently opposes the Rule. He submits that the petitioners do not have any locus-standi to file the instant writ petition since they are not employees and therefore are not in service in the republic. He submits that it is admitted in the writ petition that they are Entrepreneurs in Union Digital Centre which is under the social scheme of the government with the objective of reducing unemployment and promoting small business among the unemployed. He submits that the petitioners categorically as Entrepreneurs are conducting independent business while also making profits there from. He contends that the petitioners are not at all entitled to be absorbed in the revenue budget of the republic. He submits that relevant laws and rules clearly state the status and position of Entrepreneur as stated in the ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল which is annexed as annexure A-1. He takes us to clause 4.4 and submits that clause 4.4 clearly states that the instant writ petitioners including any other person who might be rendering service in the same manner are স্থানীয় উদ্যোক্তা (local

Entrepreneur). He contends that upon a plain reading clause No. 4.4 of the the ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল it appears that it is clearly stated in the said clause 4.4 that the local entrepreneurs who are serving under the Entrepreneur of Union Digital Centre (UDC) shall not be appointed as employees of the Union Parishad. He submits that clause No. 4.4 clearly contemplates that they are service providers and will receive consideration from the users. He next draws attention to clause 4.5 of the ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল wherefrom he submits that clause 4.5 also clearly contemplate that the instant writ petitioners are Entrepreneur (উদ্যোক্তা) who had been afforded the opportunity to provide service under a scheme promoted by the government with the objective of reducing unemployment. He next points out to clause 4.6 wherefrom he submits that clause 4.6 categorically state the responsibility and duty of the petitioners by way of being entrepreneur. He particularly points out that clause 4.6 inter alia categorically state that the instant writ petitioners all fall under the description of service provider “ জনগনকে তথ্যসেবা প্রদান করা ” He submits that they are not at all employed by the Union Parishad, and contends that it is also beyond the scheme of the manual therefore the instant petitioners being independent service providers have no locus standi to file the writ petition. He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

Learned D.A.G on behalf of the respondent Nos. 2-13 substantively supports the argument of the learned Advocate for the

respondent No. 1 and concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

Learned Advocate for the added respondent Nos. 14-41 also appeared in this matter by way of filing an affidavit in opposition. He also supports the contention of the learned Advocate for the respondent No. 1 and concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Advocate for both sides, perused the application and materials on records. The 28 petitioners, herein challenged the appointment notice issued by the respondent No. 6 inviting applications for appointment of Union Parishad “Accounts Assistant Cum-Computer Operator” which impugned noticed is annexed as annexure-T.

Since it is the respondent’s contention that the instant petitioners have no locus standi at all to file the writ petition therefore before going into other issues we are inclined to examine the issue of locus standi. Admittedly the petitioners are entrepreneurs under the entrepreneur scheme and which have been clearly admitted in the writ petition. For proper disposal of the instant Rule we have particularly examined the objective of the said entrepreneur as the petitioners are admittedly entrepreneur. Although the petitioners at some stage claim that they are in service of the respondents but however they could not substantiate their claim by any other cogent argument nor documents. Upon examination of Annexure A-1 which is the ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল we have particularly examined clause 4.4, 4.5 and 4.6 of the ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল.

Clause 4.4 of the ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল is reproduced below:

“৪.৪ স্থানীয় উদ্যোক্তা:

কম্পিউটার ব্যবহারের নূন্যতম ধারণা রয়েছে এলাকার এমন শিক্ষিত যুবকদের মধ্য থেকে উদ্যোক্তা নির্বাচন করতে হবে। তবে মহিলা এবং বেকার যুবকদের আগ্রাধিকার দিতে হবে। ইউআইএসসি পরিচালনা কমিটি সুনির্দিষ্ট নীতিমালার আলোকে উদ্যোক্তা নির্বাচন করবে। ইউআইএসসি পরিচালনায় দায়িত্বপ্রাপ্ত উদ্যোক্তাগণ ইউনিয়ন পরিষদের নিয়োগপ্রাপ্ত কর্মচারী হবেন না। ইউআইএসসি স্থাপনের মোট খরচের একটি অংশ তারা প্রদান করবেন। বিনিময়ে তারা ইউআইএসসি স্থাপনের পরবর্তী তিন বছর ইউআইএসসি থেকে প্রাপ্ত আয় নিজেরা গ্রহণ করবেন। তিন বছর পর উদ্যোক্তা ও ইউনিয়ন পরিষদের পারস্পারিক স্বার্থ বিবেচনায় রেখে ইউনিয়ন পরিষদ আয়-ব্যয়ের বন্টন নীতিমালা নির্ধারণ করবে।”

Upon perusal and examination of clause 4.4 it is clear that it is a scheme taken up by the government to reduce unemployment. Clause 4.4 of the ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল clearly states that “ইউআইএসসি পরিচালনায় দায়িত্বপ্রাপ্ত উদ্যোক্তাগণ ইউনিয়ন পরিষদের নিয়োগপ্রাপ্ত কর্মচারী হবেন না।” . Therefore ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল in clear language state that no entrepreneur will be considered as employees of the Union Parishad and consequently they are not employees under the service of the republic. The language of clause 4.4 of the ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল clearly implies and indicate that they will be service providers in lieu of consideration from general public. We have also examined clause 4.5 which are the conditions under which the entrepreneurs shall provide their services. Next we have examined clause 4.6 which states the

duty and the duty of the local entrepreneur. Serial No. 2 of clause 4.6 clearly states that the duty of the entrepreneur shall be “জনগনকে তথ্যসেবা প্রদান করা” . Therefore it is clear from the language and the scheme of the ইউনিয়ন তথ্য সেবা কেন্দ্র (ইউআইএসসি) বাস্তবায়ন ম্যানুয়েল that these petitioners are not employees of the Union Parishad and consequently they are not service holders and are not in service of the republic. They are rather entrepreneurs patronized by the government and they are service providers in lieu of consideration.

Upon examination into the materials and after hearing the learned Advocate for both sides, particularly upon perusal of Annexure- A1 we are of the considered view that the petitioners are entrepreneurs by way of being service providers upon receiving consideration /money and they not employees of the Union Parishad and not in service of the Government/ Republic.

Therefore we are in agreement with the learned Advocates for the respondents that the instant petitioners do have any locus standi to file the writ petition.

Under the facts and circumstances and the hearing of the learned Advocates for both sides we do not find any merit in this Rule since the writ petitioners has no locus standi to file the writ petition.

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)

Arif(B.O)