

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

WRIT PETITION NO. 4067 OF 2022
IN THE MATTER OF:

An application under Article 102(2)(a)(i) and
(ii) of the Constitution of the People's Republic
of
Bangladesh.

IN THE MATTER OF:

Md. Idris Sardar

.... Petitioner

-Versus-

Government of Bangladesh and others

.... Respondents

Mr. Munshi Moniruzzaman, Advocate with

Ms. Shamima Binte Habib, Advocate and

Mr. Sakib Rezwan Kabir, Advocate

..... For the petitioner

Mr. Rafi Ahmed, Advocate

.... For the Respondent No. 12

Judgment on 9th August, 2023

Present:

Mr. Justice Mahmudul Hoque

and

Mr. Justice Md. Mahmud Hassan Talukder

Mahmudul Hoque, J:

In this application under article 102(2)(a)(i) and (ii) of the
Constitution Rule Nisi was issued calling upon the respondents to show
cause as to why the impugned order dated 22.03.2022 passed under
Memo No. বেপৌস/প্রকৌ/২০২২/১৯(০৯) by the respondent No. 2 (Annexure-H)
cancelling the lease/license of Paurashava Private Bazar namely “বেড়া
সি,এন্ড,বি বে-সরকারি বাজার” and forfeiting the lease/license money in favour of
Paurashava, in violation of Clause 22 of the second schedule of “স্থানীয়

সরকার (পৌরসভা) আইন, ২০০৯” shall not be declared to have been passed without lawful authority and is of no legal effect and or such other or further order or orders passed as to this court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the petitioner along with another person named Md. Mizanur Rahman was granted a Licence by the Bera Paurashava, Pabna in respect of a Bazar named Bera C & B Private Bazar for the year 1428-1437 BS in order to generate revenue authorized by law i.e. স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯ by collecting fees from different sources and one of such sources is the fees collected from the Private Bazar. The said power of the Paurashava has been provided in Section 98 of the স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯ and which is further elaborated in schedule-3 of the said Ain.

In the year 2001, Ministry of Local Government, Rural Development and Co-operative issued an SRO being No. 270-Ain/2001 whereby certain areas of Koramza Union were included in the Bera Municipality. Bera C & B Private Bazar was set-up in the said Area of Koromza Mouza which was included in the Bera Municipality vide SRO No. 270-Ain/2001 dated 24.09.2001 and the said Private Bazar being run by the Bera Paurashava. Bera Paurashava, in order to manage and run the said Bera C & B Private Bazar used to publish tender and issued licence in favour of the responsive bidder. After expiry of the earlier license period, the then Mayor of Bera Paurashava on 20.12.2020 issued a Circular for granting license of the Private Bazar for the Year 1428-1437 BS and asked the interested bidders to submit their respective bid by

publishing the same in 2 (two) National Dailies namely “The Daily Ittefaq” and “The Daily New Nation” on 20.12.2020.

The petitioner along with his partner namely Md. Mizanur Rahman submitted their bid on 09.02.2021. The said bid was evaluated by the Tender Evaluation Committee on 14.02.2021 and thereafter, approved in the monthly meeting of the Bera Paurashava held on 17.02.2021, in favour of the petitioner and his partner for the year 1428-1437 B.S. Accordingly, the then Mayor of Bera Paurashava issued a letter on 21.03.2021 asking them to deposit total Taka 4,85,19,000.00 for the 1st 3 (three) years i.e. from 1428-1430 BS within 15 (fifteen) days, in the designated Fund of the Paurashava. As per letter dated 21.03.2021, the petitioner and Md. Mizanur Rahman, vide different challans dated 01.04.2021 and 08.04.2021 deposited the entire amount to the Paurashava. Thereafter, an agreement was executed between the petitioner and his partner with the Mayor, Bera Paurashava on 12.04.2021 incorporating certain terms and conditions. After being granted licence, the petitioner and his partner were running the said Bera C & B Private Bazar as per terms and conditions of the licence agreement and has not violated any provisions of the “স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯” and the Rules made thereunder.

The election of Bera Paurashava was held on 28.11.2021, wherein sitting Mayor got defeated and a new Mayor was elected who took over the charge as Mayor of the Bera Paurashava on 30.12.2021. After taking over charge the newly elected Mayor started obstacle against those

persons who were issued with Work Orders and Licences during the period of outgoing Mayor in order to jeopardize their business through his supporters and asked the petitioner and his partner to vacate the said Bazar and to handover possession and surrender their licence.

When the petitioner and his partner Md. Mizanur Rahman were facing such difficulties, the partner of the petitioner filed a Petition Case No. 102 of 2022 (Sathia) before the Additional District Magistrate, Court No. 1, Pabna against 32 persons under Section 144 of the Code of Criminal Procedure and the Additional District Magistrate, Pabna, by Order dated 08.02.2022 directed the Officer-in-Charge, Sathia, Pabna to maintain peace and order in the said area.

Thereafter, without following the provision of law as well as without issuing any prior show cause notice, the Mayor, Bera Paurashava, Pabna, Respondent No. 12, without any specific allegation of violation of the terms and conditions of the licence, issued a memo on 22.03.2022 cancelling the Licence of Bera C & B Private Bazar granted in favour of the petitioner and Md. Mizanur Rahman. By the said Order, the Respondent No. 12 also forfeited the licence money paid by the petitioner giving rise to file the instant Writ Petition.

The impugned order passed by the Respondent No. 12 is vague and unspecific and did not mention which terms and conditions of the licence have been breached by the petitioner rather falsely stated that before cancellation of license the petitioner was issued with show cause notices. Neither the petitioner nor his business partner received any show cause

notice in this regard. These facts clearly show that the impugned order is ill motivated and the same has been issued only to give license to his favoured persons by depriving the petitioner.

After being aware of the said impugned order, the petitioner and his partner filed an application to the respondent No. 12 requesting to withdraw the said order, but the Office of the respondent No.12 declined to receive the said application of the petitioner. Under these circumstances, the petitioner sent the said application to the Respondent No.12 and other respondents by registered post.

Although, the impugned order was issued on 22.03.2022, but the Bera Paurashava has not yet issued circular inviting tender in respect of the Bera C & B Private Bazar till date and the petitioner is still in possession of the said Bazar in question. The petitioner and his partner has not violated any terms and conditions of the license. But the Respondent No.12, with ill-motive and in order to evict the petitioner from Management of the said Bazar issued the impugned order, causing great loss to them.

As per third Schedule of the স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯, the Paurashava is entitled to collect fees against sale or import of goods in the Paura Area which generates the income of the Paurashava and the same was also recognized by the পৌরসভা আদর্শ কর তফসিল, ২০১৪ which promulgated by SRO No. 246-Ain/2014 dated 21.10.2014. But the law or the Rules of the Paurashava does not authorize any Paurashava to cancel

any license without any reasonable cause to the detriment of the license holder.

Respondent No. 12 filed affidavit-in-opposition denying material allegations made in the writ petition contending inter alia, that Ministry of Local Government, Rural Development and Co-operative framed policy in respect of lease of the Hat-Bazar, which has been published under Memo No. 46.041.030.02.00.002.2011.870 dated 21.09.2011. In Clause No. 2.1 of that policy it is stated that “হাট-বাজারের ইজারা বাংলা বৎসরের ভিত্তিতে (বৈশাখ-চৈত্র) ০১ (এক) বৎসরের জন্য প্রদান করিতে হইবে। কোন বৎসরের যাবতীয় ইজারা কার্যক্রম পূর্ববর্তী বৎসরের ২০শে চৈত্রের মধ্যে সমাপ্ত/সম্পন্ন করিতে হইবে।”

The first meeting of Poura Parishad of Bera Pourashava, Pabna was held on 06.01.2022 and a 3 member Panel Mayor of Bera Pourashava was constituted in that meeting under section 40(1) of the “স্থানীয় সরকার পৌরসভা আইন-২০০৯”. After taking license of Bera C & B Private Bazar the petitioner violated the terms and conditions of the agreement. According to the decision of the monthly meeting of Bera Pourashava held on 06.02.2022, and formed an inquiry committee to inquiry into the matter. The inquiry committee found that the petitioner has violated clause nos. 3, 5, 6 of the agreement and also violated the clause nos. 3(Kha) and 3(Dha) of the lease policy. It was also appeared to the committee that there is no provision in the lease policy to give ejara of Hat-Bazar for more than one year, but the petitioner in connivance with the earlier Parished of Bera

Pourashava took license for 10 (ten) years, which is clear violation of the ejara policy.

Consequently, the respondent no. 12 on 01.03.2022 issued notice to the petitioner asking to show cause as to why the license of the petitioner should not be cancelled. But the petitioner did not give any reply to the notice. Thereafter the respondent no. 12 on 10.03.2022 issued another notice to the petitioner to show cause, but the petitioner did not give any reply to the notice. Again, the Respondent no. 12 on 20.03.2022 issued another notice to the petitioner for showing cause, but the petitioner did not give any reply to the notice, consequently, by the impugned memo dated 22.03.2022 cancelled the license of the petitioner. After cancelling the license of Bera C & B Private Bazar Bera, the Pourashava has been collecting khas according to memo. No. বেপৌষ/প্রকৌঃ/ ২০২২/২৬ dated 24.03.2022.

The petitioner on 27.03.2022, submitted an application before the respondent no. 12, Mayor, Bera Pourashava, Pabna to withdraw the cancellation order of the license. After receipt of the application, respondent no. 12 on 28.03.2022 sent a letter to the petitioner fixing 28.04.2022 for hearing of the said application, but the petitioner did not come forward and as such, the respondent no. 12 by letter dated 28.04.2022 informed the petitioner that it is not possible to re-consider the matter. There is a provision for appeal against the order of the Mayor, but the petitioner filed the instant writ petitioner without preferring any appeal

under section 118 of the “স্থানীয় সরকার পৌরসভা আইন-২০০৯” and as such, the writ petition is not maintainable.

Mr. Munshi Moniruzzaman with Ms. Shamima Binte Habib, learned Advocates appearing for the petitioner submits that the bazar in question is a non-government bazar managed by the Bera Pourashava, Pabna who in normal course invited tender from the interested person inviting quotation on 20.12.2020 and the same was published in “the Daily Ittefaq” and “the Daily New Nation”. In the bid petitioners offer was found highest and accepted by the Pourashava by its letter dated 21.02.2021. Thereafter, Bera Pourashava entered into an agreement of licence with the petitioner and his partner Mizanur Rahman Ukil on 12.04.2021 granting licence to the petitioner for a period of 10 years on the basis of yearly rents. Pursuant to agreement of licence, the petitioner was enjoying the licence for one year but all of a sudden some people created disturbances with smooth running of their business, consequently, one of the petitioner Md. Mizanur Rahman filed a Petition Case No. 102 of 2022 in the Court of Executing Magistrate, Court No. 01, Pabna under section 144 of the Code of Criminal Procedure. Thereafter, the Pourashava authority by a letter dated 22.03.2022 cancelled the licence granted to the petitioner and forfeited the money deposited by them in favour of Pourashava alleging that the licence granted in favour of the petitioner by Pourashava is illegal and without lawful authority.

He submits that the letter of cancellation dated 22.03.2022 issued by one Raisul Islam who was not Mayor of the Pourashava or was holding

charge of the Mayor at that time. It is also argued that the Pourashava claimed that before issuance of such letter of cancellation they issued notice to show cause on several times, but the Pourashava could not substantiate their claim by showing any paper that the petitioner or his partner received such notice. He submits that a person who is not Mayor of the Pourashava or holding the charge of Mayor as Penal Mayor had no lawful authority to issue any notice to the petitioner to show cause or to issue letter under challenge cancelling the licence of the petitioner granted by the Pourashava itself upon compliance of all the formalities.

He argued that there is a provision of appeal against the order of Mayor under section 118 of Local Government (Pourashava) Act 2009), but the impugned order was not passed by the Mayor of Pourashava, but passed by a person who had no jurisdiction or authority to issue such letter. As such, the impugned order being not passed by a person having jurisdiction is not appealable. Where any order passed by a person without jurisdiction and lawful authority is void ab initio and amenable in writ jurisdiction. Moreover, notice to show cause whatever submitted by the Pourashava are all manufactured and collusively shown served upon the petitioner by forging signature of Mizanur Rahman Ukil.

He submits that there is a provision in law, how and in what manner a Penal Mayor can take charge of Mayor, but in the instant case the Pourashava authority could not show when the elected Mayor went on leave and how Raisul Islam took charge of Mayor, at what time. Because of absence of any paper of holding charge by Raisul Islam all those

decisions whatever taken by him is palpably illegal and malafide. As such, the impugned letter of cancellation of licence is illegal and liable to be declared without lawful authority.

Mr. Rafi Ahmed, learned Advocate appearing for the respondent No. 12 submits that as per clause 2.1 published under Memo No. 46.041.030.02.00.002.2011.870 dated 21.09.2011, licence cannot be granted for more than one year. But in the instant case the licence granted by the Pourashava in favour of the petitioner is for a period of 10 (ten) years which is in violation of নীতিমালা in this regard. Apart from this, the petitioner violated other terms and conditions of licence, consequently, the Pourashava authority by notice dated 01.03.2022, 10.03.2022 and 20.03.2022 repeatedly asked the petitioner to show cause why their licence should not be cancelled for violation of terms and conditions as embodied in the licence and the money deposited with the Pourashava shall not be forfeited. Though the petitioner received all those show cause notices did not reply even contacted the respondent No. 12 with any explanation, consequently, by the impugned letter dated 22.03.2022, the licence in question was cancelled and the money deposited with the Pourashava has been forfeited in terms of the licence.

He further submits that if the petitioner has become aggrieved he is to file appeal under section 118 of the Local Government (Pourashava) Act 2009 before the government and without exhausting the procedure of law they cannot invoke writ jurisdiction. He submits that all those show cause notices and the impugned letter were issued by a Penal Mayor

named Raisul Islam, because of vacancy of the chair at that time and a Penal Mayor holding the charge of Mayor has jurisdiction and authority to discharge all the acts and powers of the elected Mayor.

He finally submits that after issuance of impugned letter and on receipt of a representation from the petitioner, the Pourashava authority by its letter dated 28.03.2022 asked the petitioner to appear before the Pourashava on 28.04.2022 with all relevant papers and documents to substantiate their claim that the licence has been cancelled illegally and forfeiture of the money is illegal, but the petitioner did not come forward with any explanation either on the date fixed or later on, but they filed this writ petition challenging the legality of the order dated 22.03.2020, as such, the Rule is liable to be discharged.

We have heard the learned Advocates for the parties, have gone through the writ petition and the grounds setforth therein, affidavit-in-opposition, all those annexures annexed to the writ petition, supplementary affidavit and the impugned order passed by the respondent No. 12.

The respondent No. 12 in usual course of business floated a tender notice dated 20.12.2020 inviting quotation from the interested person or businessman to lease out Bera C & B non-government bazar for a period of 10 (ten) years, on yearly basis starting from 1st Boishakh 1428 to 30, Chaiyetra 1437. Said notice was published in “the Daily Ittefaq” and “the Daily New Nation”. The petitioner submitted quotation offering the amounts on yearly basis for a period of 10 (ten) years. The tender was

evaluated by tender committee in its meeting dated 14.02.2021 and approved by the board in its monthly meeting dated 17.02.2021 accepting the offer of the petitioner and communicated to them by letter dated 21.03.2021 and by the said letter the petitioner was asked to deposit the money quoted in the quotation, accordingly, the petitioner by several receipts deposited the amount as appearing from Annexure-D to the writ petition. After deposit of money, Bera Pourashava authority entered into an agreement with the petitioner on 12.04.2021. Pursuant to the agreement the petitioner went in possession and enjoying the benefit under the licence. At the first instance some local unscrupulous men created disturbances in the smooth running of the bazar resultantly, the petitioner's partner Md. Mizanur Rahman filed Petition Case No. 102 of 2022 in the court of Executive Magistrate, Court No. 1, Pabna, under section 144 of the Code of Civil Procedure in which an order was passed directing Officer-in-Charge, Sathia, Police Station to maintain peace. While the petitioner running the business under the licence, without any notice to show cause, the Pourashava authority cancelled the licence by letter dated 22.03.2022 alleging that the petitioner was asked to show cause by several notices, but they failed to response the same and finally finding the petitioners guilty of violation of terms and conditions of the licence as well as the licence being given in favour of the petitioner illegally, it was cancelled by a person describing himself as Mayor of Bera Purrashava named Raisul Islam.

At the time of hearing we wanted to know the learned Advocate for the Pourashava under what provision of law Raisul Islam took charge of the elected Mayor and how he can issue such a letter cancelling the licence posing himself as Mayor of Bera Pourashava. In reply, learned Advocate for the respondent No. 12 submits that in the absence of elected Mayor there is a provision for holding charge of the Mayor by one of the Penal Mayor elected by the board. Said Raisul Islam is a Penal Mayor who took the charge of the elected Mayor in his absence, but in support of his such submissions the Pourashava authority, respondent No. 12, could not submit any papers showing that when the elected Mayor went on leave, for what reason as contained in law and how Raisul Islam took charge of the elected Mayor, from which date, upto which period and whether he was legally authorized by the Ministry to perform the duty or exercise power of the Mayor and to what extent. In the absence of any positive case on the part of the respondent No. 12, we find that said Raisul Islam though a penal Mayor did not hold the office of the elected Mayor on any basis of law.

From annexure-2 series and annexure-3, it appears that all those letters were signed by said Raisul Islam as Mayor of Bera Pourashava and those letters have been annexed showing service of the same upon one Md. Mizanur Rahman Ukil, but the Pourashava could not satisfy the court how and in what manner those letters were served upon Mizanur Rahman, by producing any Peon Book or postal receipts rather the signature of Mizanur Rahman Ukil as appearing on the annexure-2, shows that the

signature clearly differs from the signature of Mizanur Rahman Ukil contain on the deed of agreement executed in between Pourashava and the petitioner. Moreover, annexure-2(1) contains no signature of the Mayor, annexure-2(2) was issued on 20.03.2022 asking the petitioner to show cause within 03 (three) days from the date of receipt of the letter as to why the licence shall not be cancelled and the security money shall not be forfeited, but the said notice was issued on 20.03.2022 and the licence was cancelled on 22.03.2022 giving only two days which on the face of it is palpably illegal and in violation of rule of principles of natural justice.

In one hand, the person who issued all those notices to show cause as well as impugned order had no authority to issue such letters in the presence of elected Mayor and without holding the charge of Mayor and on the other hand those notices though filed and annexed to the affidavit-in-opposition, they utterly failed to prove that those were duly served upon the petitioner before cancellation of the licence, and as such, cancellation of licence was done in absolute violation of law and the principles of natural justice. The order under challenge was issued by a person having no authority or jurisdiction is amenable in writ jurisdiction though there is a provision for alternative remedy. Another question raised by the respondent No. 12 that, hat and bazar cannot be leased out to any person for more than one year, but in the instant case, the then Mayor of Pourashava most illegally leased out the hat for a period of 10(ten) years which is illegal under Memo No. 46.041.030.02.00.002.2011.870 dated 21.09.2011 which provides that “হাট-বাজারের ইজারা বাংলা বৎসরের ভিত্তিতে

(বৈশাখ-চৈত্র) ০১ (এক) বৎসরের জন্য প্রদান করিতে হইবে। কোন বৎসরের যাবতীয় ইজারা কার্যক্রম পূর্ববর্তী বৎসরের ২০শে চৈত্রের মধ্যে সমাপ্ত/সম্পন্ন করিতে হইবে।”

In reply, Mr. Moniruzzaman submits that the নীতিমালা is applicable for the hat and bazar owned by the government, but the bazar in question is a non-government bazar as appearing from tender notice as well as the agreement executed in between the parties. So, this নীতিমালা is not at all applicable in the present case, moreover, the license was granted on yearly basis.

We have gone through the নীতিমালা and finds substance in the submissions of the learned Advocate for the petitioner. When a legally executed instrument or any order given by any authority can be cancelled on the ground of illegality, irregularity etc. by giving notice to show cause to the person in whose favour the order was passed, but in the instant case before cancellation of the licence no notice to show cause was served upon the petitioner, though the respondent No. 12 tried to show that before cancellation of the licence they issued three notices asking the petitioner to show cause, but those notices are mere paper lying with the authority and not duly served upon the petitioner and it is also noticed that those notices have been shown served upon the petitioner within 20 (twenty) days giving very very short time and finally the licence was cancelled by giving three days notice, but before expiry of three days the licence was cancelled without serving the same and affording any opportunity to reply to the show cause by the petitioner which is malafide and is of no legal effect.

In view of the observations made hereinabove and the submission made by the learned Advocates for both the parties, we find that the action whatever taken by the respondent No. 12 through one Raisul Islam posing himself as Mayor of the Pourashava are all tainted with high handedness and highly arbitrary in the eye of law.

Taking into consideration the above, we find merit in the Rule Nisi as well as in the submissions of the learned Advocate for the petitioner.

In the result, the Rule Nisi is made absolute, however, without any order as to costs.

The impugned letter dated 22.03.2022 issued by respondent No. 12 under the signature of one Raisul Islam posing himself as Mayor of the Pourashava is hereby declared illegal, without jurisdiction and is of no legal effect and by the said letter cancellation of licence and forfeiture of security money of the petitioner is hereby declared illegal and without lawful authority.

Communicate a copy of this judgment to the parties concerned.

Md. Mahmud Hassan Talukder, J:

I agree.