

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

Writ Petition No. 3817 of 2021.

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:

Shanti Gopal Halder and 168 others

..... Petitioners

-Versus-

Bangladesh represented by the Secretary,
Ministry of Health and Family Welfare and
others.

. . . . Respondents

Mr. M. Ashraf Ali with

Mr. Md. Shakhawat H Khan, Advocates

. . . For the petitioners.

Mr. Muhammad Khalequzzaman Bhuiyan, Advocate

. . For the respondents No. 3-5.

Mr. Apurbo Kumar Biswas, AAG.

. . For the respondent No.8.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 03.01.2024, 16.01.2024,
17.01.2024, 13.03.2024 and Judgment
on 18.03.2024.

J. B. M. Hassan, J.

The petitioners obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the decision of the respondent No.4
communicated the same through press release vide memo No.
80.107.011.00.00.006.2017 (অংশ-১)-76 dated 06.05.2018 issued
by the respondent No.4, under the signature of the respondent
No.5, cancelling the candidature of the petitioners (Annexure-D
to the writ petition) as candidate for attending the viva voice

exam for the post of Senior Staff Nurse of the Directorate General of Nursing and Midwifery under the Ministry of Health and Family Welfare should not be declared to be without lawful authority And as to why the respondents should not be directed to allow the petitioners to participate in the viva voce examination in continuation with the recruitment notice vide memo No. 80.00.0000.301.073.01. 2017-273 dated 10.08.2017 (Annexure-B to the writ petition) of the recruitment process for the remaining 946 posts of Senior Staff Nurse of the Directorate General of Nursing and Midwifery under the Ministry of Health and Family Welfare forthwith and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi are that all the petitioners completed their Bachelor of Science in Nursing with Honours from different Nursing Colleges under different public Universities of Bangladesh and successfully completing the comprehensive (pre-registration licensing) examination, they obtained registration to work as registered Nurse from the Bangladesh Nursing and Midwifery Council, (shortly, the BNMC). The Bangladesh Public Service Commission (BPSC) published a recruitment notice on 10.08.2017 for recruitment of Senior Staff Nurse. Pursuant to said notice, having the educational qualification (Bachelor of Science in Nursing) the petitioners along with others participated in the recruitment process and appearing in the examination of Multiple Choice Questions (MCQ), they became qualified to appear in the next Viva Voce Examination. But before appearing for the Viva Voce Examination, the impugned public notice was published on 06.05.2018 cancelling candidature of the candidates who appeared in the Registration Examination of BNMC

after 30.08.2017. Thereby the petitioners were debarred from appearing in the Viva-Voce Examination on the plea that they appeared in the BNMC Registration Examination after the cut off date, 30.08.2017. In this backdrop, the petitioners filed this writ petition and obtained the present Rule Nisi.

By filing supplementary affidavit, the petitioners also state that on similar footing 05(Five) candidates were allowed to appear in the Viva-Voce Examination although they got registration from the Bangladesh Nursing and Midwifery Council (the Council) after 30.08.2017.

The BPSC as respondents No. 3-5 appearing in the Rule Nisi have filed an affidavit in opposition contending, *inter alia*, are that 05(five) candidates mentioned by the petitioners applied to the BPSC to re-check their papers relating to appearing in the Board of final examination. After re-checking the same, the BPSC was convinced that their final examination was held before the closing date of online application. As such, they were allowed to sit for the Viva-Voce examination and after successful appearance before the Viva- Voce examination, they were recommended to join the service as Senior Staff Nurse.

The respondents never discriminated among the candidates. The Bangladesh Public Service Commission (BPSC) is a body established by the Constitution of the People's Republic of Bangladesh entrusted with the duties and responsibilities to select suitable candidates for the service of the Republic and also give opinion when consulted as per laws. The office of the BPSC called for online application for appointment of Senior Staff Nurses and applications were received accordingly. After scrutiny eligible

applicants were selected for MCQ type written examination and Viva Voce examination. The BPSC vide letters dated 16.09.2018, 08.01.2019 and 07.04.2019 recommended total 5128 candidates as per rule. Out of 5128 candidates 5127 candidates joined the service and one candidate could not join due to lack of requisite papers. Therefore, out of 10182 eligible candidates $(10182-5127-1)= 5054$ candidates could not be recommended due to lack of vacant posts.

During Covid 19 situation prevailed all over the world including Bangladesh, the Government decided to create another 6000 posts and asked the BPSC to select the suitable candidates for recommendation. As per Government requisition to recommend suitable candidates for newly created 6000 posts of Senior Staff Nurses, the BPSC took initiatives to recommend 5054 candidates from the previous list who already passed the written and Viva-Voce examination but due to lack of suitable candidates, the BPSC could not recommend any candidate in 946 posts. Out of 6000 vacant posts of Senior Staff Nurse, 5054 candidates were recommended and 964 posts left vacant due to non availability of suitable candidates. The candidates who could not pass the Viva Voce examination, were not recommended. The complaint for recommending the disqualifying persons without attending the Viva Voce examination is not correct and total misinformation and misleading. There is no case of depriving the petitioners or there is no intention to violate the fundamental rights of the petitioners.

Mr. M. Ashraf Ali, learned Advocate for the petitioners submits that the petitioners are all B.Sc (Honours) in Nursing and that they were unduly

required six months internship for appearing in the registration examination under the BNMC unlike other students who only got their Diploma in Nursing for the general post of Senior Staff Nurse. On such circumstances, the petitioners filed writ petition No. 9476 of 2017 and obtained interim order to appear in the registration examination under the BNMC without internship. He further submits that the said interim order was challenged before the Appellate Division under the Civil Petition for Leave to Appeal (CPLA) No. 2735 of 2017 wherein, eventually, the petitioners got order to appear in the registration examination by 23.08.2017. But due to clerical mistake in the order of the Appellate Division, they could not appear in the examination scheduled on 23.08.2017. However, by the Court's order subsequently their examination was managed and conducted on 24.11.2017. He also submits that in view of order of the Appellate Division since the petitioners appeared in the registration examination scheduled to be held on 23.08.2017, the respondents intentionally and with malafide intention made them disqualified by the impugned notice.

On the other hand, Mr. Muhammad Khalequzzaman Bhuiyan, learned Advocate for the respondents No.3-5 (the BPSC) contends that admittedly the petitioners did not appear in any exam before 30.08.2017. The BPSC is conducting the exam pursuant to the requisition from the Ministry of Health and Family Welfare. He further contends that since the petitioners could not appear in the exam within the cut off time, the BPSC rightly debarred them from appearing in the Viva-Voce exam.

We have gone through the writ petition, affidavit in opposition and other materials on record.

It appears that upon requisition of the Ministry of Health and Family Welfare, the BPSC published recruitment notice dated 10.08.2017 for the post of Senior Staff Nurse. Pursuant to said notice, the petitioners' candidature having been accepted, they successfully completed MCQ examination and duly selected for the next Viva-Voce examination by the notices dated 24.04.2018 and other dates. In the meantime by circulating the impugned notice dated 06.05.2018, the BPSC debarred the candidates from appearing in the Viva-Voce examination who attended the examination for registration under the BNMC after 30.08.2017. Being aggrieved by this circular, the petitioners filed this writ petition. For better understanding the said impugned notice is quoted herein below:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
বাংলাদেশ সরকারী কর্ম কমিশন সচিবালয়
আগারগাঁও, শেরে বাংলা নগর,
ঢাকা-১২০৭
www.bpsc.gov.bd

প্রেস বিজ্ঞপ্তি

নং ২০০১০৭.০১১.০০.০০.০০৬.২০১৭(অংশ-১)-৭৬

তারিখ। ০৬ মে ২০১৮

স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়স্বাধীন নার্সিং ও মিডওয়াইফারি অধিদপ্তরের 'সিনিয়র স্টাফ নার্স' (১০ম গ্রেড) পদে MCQ Type লিখিত পরীক্ষায় উত্তীর্ণ যে সকল প্রার্থীগণের নার্সিং কাউন্সিল কর্তৃক প্রদত্ত রেজিস্ট্রেশন সনদ ৩০.০৮.২০১৭ তারিখের পর ইস্যুকৃত সে সকল প্রার্থীগণকে নার্সিং কাউন্সিল কর্তৃক রেজিস্ট্রেশন পরীক্ষার প্রবেশপত্রের (এডমিট কার্ড) মূল কপি ও সত্যায়িত ফ-টোকপি এবং অন্যান্য প্রয়োজনীয় কাগজপত্রাদি অবশ্যই মৌখিক পরীক্ষার বোর্ডে জমা দিতে হবে। উল্লিখ্য যে সকল প্রার্থীর রেজিস্ট্রেশন পরীক্ষা ৩০.০৮.২০১৭ তারিখের পর অনুষ্ঠিত হয়েছে তাদের প্রার্থীতা বাতিল বলে গণ্য হবে।

(শেখ শাখাওয়াত হোসেন)
পরীক্ষা নিয়ন্ত্রক (নন-ক্যাডার)
(অতিরিক্ত সচিব)”

The petitioners who completed their B.Sc (Honours) in Nursing, were required to complete 6 (six) months internship before appearing in the Registration Examination under the BNMC. But the diploma holders in Nursing did not require any internship. In the circumstances, the petitioners filed writ petition No. 9476 of 2017 and obtained interim order of direction on 09.07.2016 to allow the petitioners to appear in the Registration Examination scheduled to be held on 23.08.2017 without internship. Although the interim order was challenged under CPLA No. 2735 of 2017, yet the petitioners were allowed to appear in the Registration Exam scheduled on 23.08.2017 without internship. But they could not appear in the exam on the said date due to clerical mistake in the order. However, by correcting the order, they sat for the exam on 24.11.2017 inasmuch, the court directed the respondents to arrange the exam of 23.08.2017 for the petitioners by special arrangement. On the other hand, the BPSC issued the impugned notice dated 06.05.2018 cancelling candidature of candidates who appeared in the Registration Exam held after 30.08.2017. On plea of petitioners' exam held on 24.11.2017 i.e after the cut off date on 30.08.2017, the petitioners were debarred from appearing before the recruitment process. In the circumstances, the crux issue to be decided as to whether petitioners are eligible to appear before the Viva-Voce examination in the recruitment process inspite of issuance of notification dated 06.05.2018.

In this context, to assess the submissions of the learned Advocate for the petitioners, we have gone through the order dated 03.08.2017 of the

Appellate Division passed in CPLA No. 2735 of 2017 which runs as follows:

“This petition is directed against an ad-interim order passed by the High Court Division.

It relates to comprehensive (licensing pre-registration) examination under the Bangladesh Nursing and Midwifery Council. The High Court Division made an interim order allowing the writ petitioners to attend the comprehensive licensing examination without undergoing internship.

Mr. Mahbubey Alam, learned Attorney General submits that the High Court Division has given full relief to the writ petitioners keeping nothing to be decided on merit in the case. Mr. Probir Neogi, learned counsel appearing for the respondents on the other hand submits that the writ petitioners sought an injunction in respect of paragraph 3(Ga) of the নীতিমালা dated 15.02.2017 Annexure-B to the writ petition.

Upon hearing the parties, we modify the interim order to the effect that the students who have passed B.Sc in nursing course are not required to appear in the comprehensive examination of internship subject to the condition that they must qualify in the examination to be conducted by the Council.

This petition is accordingly disposed of with the above modification.”

Due to detection of clerical error, at the instance of petitioners, the aforesaid order was corrected by the subsequent order dated 23.08.2017 which runs as follows:

“This is an application for modification of the order dated 03.8.2017 passed by this Division.

It is stated that in the operating part of the order dated 03.8.2017 inadvertently the word "Internship" has been dropped after the word "required" and before the word 'to'.

On perusal of the record and other materials on record and the earlier order, we find merit on the submission of Mr. Probir Neogi, learned counsel for the applicants.

This is an inadvertent mistake on the part of this court in drawing up the order.

The word "Internship" be added after the word 'required' and before the word 'to' and also after the word 'of' in the 3rd line of the operating part the word 'internship' be deleted.

We direct the authority to afford the writ petitioner to appear in the comprehensive examination, which is scheduled to be held today. If the examination is over, the examination of the writ petitioners be arranged within 1(one) month from date.

Accordingly, the application is allowed with the above correction.”

(Underlined)

From the above orders dated 03.08.2017, 23.08.2017 and also the order dated 09.07.2017 passed in Writ Petition No. 9476 of 2017, it appears that the petitioners filed the said writ petition challenging imposition of completing 6 (six) months internship before Registration Examination for the registration to be given by the BNMC (Council). In the said writ petition, the petitioners obtained interim order to appear in the Registration Examination without internship. Although it was challenged under the above mentioned CPLA but the Appellate Division by order dated 03.08.2017 modifying the interim order of the High Court Division allowed the candidates who passed the Bachelor of Science Nursing Course to appear in the examination scheduled to be held on 23.08.2017 without internship. But due to some clerical mistakes, the petitioners filed an application in the said CPLA for modification of the order dated 03.08.2017 by its correction. Incidentally the order was passed on 23.08.2017, on which date the examination was going on. Considering such circumstances, the Appellate Division by the modified order dated 23.08.2017 passed an alternative order on failing to take examination on that day (23.08.2017), the respondents were directed to arrange an examination within next 01(one) month from

date. We find that the petitioners could not appear in the exam on 23.08.2017. But by a special arrangement as directed by the Court, they sat for the exam held on 24.11.2017. Thus, language of the order dated 23.08.2017 makes it clear that by the Appellate Division's order, the petitioners were allowed to appear in the examination scheduled to be held on 23.08.2017 although practically they sat for the examination by a special arrangement on 24.11.2017. Considering the aforesaid facts and circumstances, we are led to construe that the petitioners appeared in the examination of 23.08.2017 of the BNMC for registration under the Council although it was held on 24.11.2017.

In spite of the above facts, the respondents did not allow the petitioners to appear in the Viva-Voce examination. But at the same time, we find from appointment circular dated 07.05.2023 that 04(four) other candidates, namely, Tasmia Nourin, Mosammat Shafina Zahid, Zannat Ara Tania and Ayesha Siddique bearing Roll No. 300188, 015590, 012496 and 015503 respectively were allowed to appear in the Viva-Voce examination who also appeared in the Registration Examination alongwith the petitioners i.e on 23.08.2017 (24.11.2017) and eventually, they got appointment. In view of above discussions, we are of the view that the impugned action of respondents debaring the petitioners from appearing in the Viva-Voce examination under the recruitment process was malafide and so, can not sustain in the eye of law. As such, their action debaring the petitioners from appearing in the Viva-Voce examination was unlawful and so liable to be declared without lawful authority.

Be that as it may, the said recruitment process has already been concluded and in the meantime the petitioners crossed their age limit for the fresh recruitment in the post of Senior Staff Nurse. From the affidavit affirmed by the respondent No.5, we find that in the meantime the BPSC is proceeding with another recruitment process for appointing Senior Staff Nurse for the vacant posts of 2367 by the recruitment notice dated 06.02.2023 and in the meantime although their Viva-Voce examination was concluded but affidavit of the BPSC shows that the final decision has not yet been taken. In the circumstances, justice would be best served if the petitioners are allowed to appear in the Viva-Voce examination under the running recruitment process pursuant to the recruitment notice dated 06.02.2023.

In view of above, the respondents are directed to allow the petitioners to appear in the Viva-Voce examination within 15(fifteen) days from the date of receipt of a copy of this judgment and order for consideration of their appointment under the recruitment advertisement dated 06.02.2023.

With the above direction, the Rule Nisi is disposed of.

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J

I agree.