

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

Writ Petition No. 11405 of 2022.

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:

Dr. Sheikh Shaiful Alam Shaheen.

..... Petitioner

-Versus-

Bangladesh represented by the Secretary,
Ministry of Education and others.

. Respondents.

Mr. Md. Shahidul Islam, Advocate

. . . For the petitioner.

Mr. Md. Abdul Quiyam with

Mr. Abdullah Al Mamun, Advocate

. . .For the respondent No.07.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard and Judgment on 07.03.2024.

J. B. M. Hassan, J.

The petitioner 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 memo No. College Shakha/Dhaka Mahanagari/107916/2200872 dated 15.09.2022 issued by the respondent No.3 under the signature of the Inspector of College (respondent No.4) approving the Governing Body of Shahid Zia Girls School and College, Jatrabari, Dhaka constituting the respondent No. 7 as President in violation of Regulation 5(2) and 5(3) of the Secondary and Higher Secondary Education Board, Dhaka (Governing Body and Managing Committee) Regulations, 2009 (Annexure-H to the writ petition) should not be declared to have been issued 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.”

Relevant facts leading to issuance of the Rule Nisi are that in order to constitute a Governing Body of the Shahid Zia Girls School and College, Jatrabari, Dhaka (the College), the Presiding Officer declared uncontested eight members of guardian category/ teachers category by his memo dated 01.08.2022 (Annexure-D to the writ petition). Thereafter on 04.08.2022, the Principal of the College sent the proposal of 3 (three) names for the Post of President to be nominated by the Secondary and Higher Secondary Education Board, Dhaka (shortly, the Board) in accordance with regulation 5(3) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, ঢাকা (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯” (the Regulations, 2009). But the Chairman of the Board, (respondent No.3) by the impugned order dated 15.09.2022 approved the Committee nominating the respondent No.7 (Md. Shantanur Khan) as President of the Governing Body. This nomination led the petitioner to file this writ petition.

On the other hand, Mr. Abdullah Al Mamun, learned Advocate for the respondent No. 7 although has filed an application for discharging the Rule but no affidavit in opposition was filed on his behalf.

Mr. Md. Shahidul Islam, learned Advocate for the petitioner submits that the regulation 5(3) of the Regulations, 2009 provides that the President of the Governing Body shall be nominated by the Chairman of the Board from a three member list to be sent by the Principal of the College upon consultation with the local Member of Parliament and other concerned persons as mentioned in the said Regulations. Although the list was sent by the Principal mentioning names of three persons including this petitioner but

the Chairman of the Board ignoring the said list nominated the respondent No.7 from his own choice. Thus, the nomination of President of the Governing Body was made in violation of law and as such, can not sustain in the eye of law.

Mr. Md. Abdul Quiyam learned Advocate for the respondent No.7 has drawn our attention to the Annexures-E and F to the writ petition and he contends that although the Regulations incorporated provision empowering the Principal of the College to prepare a list of three persons in consultation with the local Member of Parliament (MP) and other concerned persons but D.O letter of the MP as forwarded by the Principal (Annexure-E and F) show that the petitioner was chosen alone for nomination as President. Thus, the list prepared by the Principal was not done in accordance with regulation 5(3) of the Regulations, 2009. He further contends that the nomination of President by the Chairman of the Board under the impugned letter although violates the legal provision, at the same time the list prepared by the Principal has also violated the regulation 5(3) of the Regulations, 2009. In the circumstances, a fresh list has to be prepared by the Principal in accordance with regulation 5(3) of the Regulations, 2009.

We have gone through the writ petition and other materials on record as well as the relevant legal provisions.

To settle the issue raised under this Rule Nisi, let us first read the relevant legal provision of regulation 5(3) of the Regulations, 2009 which runs as follows:

“৫ (৩) উপ-প্রবিধান (২) এর অধীন উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠান ব্যতীত অন্যান্য উচ্চ মাধ্যমিক স্তরের বেসরকারি উচ্চ মাধ্যমিক শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি'র সভাপতি মনোনয়নের লক্ষে প্রতিষ্ঠান প্রধান, স্থানীয় নির্বাচিত সংসদ সদস্য ও শিক্ষানুরাগী ব্যক্তিগণের সহিত আলোচনাক্রমে, সংরক্ষিত আসনের জাতীয় সংসদ সদস্য, স্থানীয় জনপ্রতিনিধি প্রথম শ্রেণীর সরকারী কর্মকর্তা, সরকারি বা স্বায়ত্বশাসিত সংস্থার অবসরপ্রাপ্ত প্রথম শ্রেণীর কর্মকর্তা, স্থানীয় শিক্ষানুরাগী ব্যক্তি বা স্থানীয় খ্যাতিমান সমাজসেবকগণের মধ্য হইতে তিনজন ব্যক্তির নাম ও জীবন-বৃত্তান্ত বোর্ডের নিকট প্রেরণ করিবেন এবং বোর্ডের চেয়ারম্যান উক্তরূপ প্রস্তাবিত ব্যক্তিগণের মধ্য হইতে তাহার বিবেচনামত একজনকে সভাপতি মনোনীত করিবেন।

তবে শর্ত থাকে যে, এই উপ-প্রবিধানের অধীন কোন কর্মকর্তা বা ব্যক্তিকে দুইটির অধিক উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠানের সভাপতি পদে মনোনয়ন প্রদান করা যাইবে না।”

On a plain reading of the aforesaid provision, it is clear that the Principal of the College upon consultation with the local Member of Parliament (MP) and Education interested persons, shall prepare a list of three persons from member of parliament from reserved seat, local public representatives, 1st class Officer or any retired 1st class government officer or any autonomous establishment or local education interested person or local reputed social worker. Thus, it is clear that the nomination to be made by the Chairman of the Board among three persons to be sent by the Principal of the College in accordance with aforesaid provision. It is apparent that under the impugned order the respondent No.7 was not nominated from the said list and so his nomination, on the face of it, was illegal having no sanction in accordance with regulation 5(3) of the Regulations, 2009.

At the same time, we also find that the list prepared by the Principal is carrying a Demi-Official (D.O) letter issued by the local Member of Parliament and that Principal stated in his forwarding that the local Member

of Parliament selected only the petitioner for the post. Thus, from the list and the D.O letter, we are also of the view that it was not prepared on observance of required procedure under regulation 5(3) of the Regulations, 2009. Although, learned Advocate for the petitioner submits that the Principal sent the list without D.O letter through online but Annexure-E and F submitted by the petitioner himself show that those letters were forwarded to the Chairman of the Board in order to make influence for nomination of the petitioner. Therefore, the present list sent by the Principal has not been prepared in accordance with the regulation 5(3) of the Regulations, 2009 and so, it needs to prepare a fresh list.

Be that as it may, it appears that the members of the Governing Body were elected on 01.08.2022. Among them 04(four) members are from the teachers and other 04(four) members are from the guardians. Two guardian members are from the students of class XI and XII who are apparently no more students in the College. Considering the above, we are of the view that there being need of a fresh election for constituting regular Governing Body and in the meantime to meet the interim period, an Ad-hoc committee is necessary.

In the circumstances, we find merit in this Rule Nisi.

In the result, the Rule is made absolute. The memo No. College Shakha/Dhaka Mahanagari/107916/2200872 dated 15.09.2022 issued by the respondent No.3 under the signature of the Inspector of College (respondent No.4) approving the Governing Body of Shahid Zia Girls School and College, Jatrabari, Dhaka nominating the respondent No. 7 as President in

violation of Regulation 5(2) and 5(3) of the Secondary and Higher Secondary Education Board, Dhaka (Governing Body and Managing Committee) Regulations, 2009 (Annexure-H to the writ petition) is hereby declared to have been issued without lawful authority and is of no legal effect.

The Board is directed to appoint an Ad-hoc Committee in accordance with regulation 39 of the Regulations, 2009 within 30(thirty) days from the date of receipt of a copy of this Judgment and Order in order to constitute a regular Governing Body.

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

Razik Al Jalil, J

I agree.