

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Hasan Foez Siddique, C. J.

Mr. Justice M. Enayetur Rahim

Mr. Justice Jahangir Hossain

CIVIL PETITION FOR LEAVE TO APPEAL NO.55 OF 2023

(From the judgment and order dated the 14th day of November, 2022 passed by the High Court Division in Writ Petition No.1278 of 2017).

Sree Chandan Das : Petitioner
-Versus-
Sukhamoy Chakraborty and others : Respondents

For the Petitioner : Mr. Probir Neogi, Senior Advocate,
instructed by Ms. Shahanara Begum,
Advocate-on-Record
For Respondent No. 1 : Mr. Md. Nurul Amin, Senior Advocate,
with Mr. Yousuf Hossain Humayun,
Senior Advocate and Mr. Momtaz Uddin
Fakir, Senior Advocate, instructed by
Ms. Madhumalati Chowdhury Barua,
Advocate-on-Record
Respondent No. 2-4 : Not represented
Date of hearing and judgment : The 16th day of July, 2023

JUDGMENT

M. Enayetur Rahim, J: This civil petition for leave to appeal is directed against the judgment and order dated 14.11.2022 passed by the High Court Division in Writ Petition No.1278 of 2017 making the Rule absolute.

The relevant facts leading to the filing of the present civil petition for leave to appeal are as follows:

The then High Court of Adjudicator, Calcutta by its judgment and order dated 03.01.1915 disposed of the First Appeal No.398 of 1911 and connected Civil Rule No. 1586 (F) of 1945. By the said judgment and order the Calcutta High Court had created a scheme for management of the 3 Hindu

Temples, namely Kanchan Nath at Fatikchari, Chandra Nath Dham at Sitakunda and Adinath Temple at Moheshkhali of the then Chittagong District. The Calcutta High Court held that the aforesaid 3 (three) temples were to be managed by a managing committee, details of which were mentioned in the said judgment.

Eventually, Civil Rule No. 159 (R) of 2001 arose out of an application made by one Sukhamoy Chakraborty, Secretary of Sitakunda Shrine Committee for amendment and modification of the scheme which was framed by the then High Court of Adjudicator, Calcutta. The High Court Division by its judgement and order dated 31.5.2001 made the said Rule absolute and the scheme of management of the affairs of the above 3 (three) temples were modified by reconstituting its managing committee. One of the aggrieved parties preferred Civil Petition for Leave to Appeal No.1765 of 2001 before this Division, which gave rise Civil Appeal No. 125 of 2004, and this Division by its judgment and order dated 12.06.2012 [**reported in 21 BLC (AD) 55**] disposed of the same and re-constituted the Sitakunda Shrine Committee as under:

“The Sitakunda Shrine Committee shall be constituted as follows:-

- i) One representative from the Aadhikaries.*
- ii) One representative from the Hindu Endowment Committee (Hindu Utsarjan Committee) at Chittagong City.*
- iii) Two Hindu residents of Sitakunda and one Hindu resident of Fatikchari to be nominated by the District Judge, Chittagong, Similarly, one Hindu resident of Moheshkhali to be nominated by the District Judge, Cox’s Bazar.*
- iv) One elected Hindu member from each of the District Council/Zila Parishads of Chittagong and Cox’s Bazar, if any, to be nominated*

by the chairman of the District Council/ Zila Parishad, Chittagong and Cox's Bazar. If no such person is available, the respective Chairman of the District Council/Zila Parishad shall be approached by the Shrine Committee to nominate any Hindu of high social standing or a well reputed Advocate to act as a member of the Shrine Committee from this category for a period of 5 years and he shall function as such till the expiry of the term of the Committee.

- v) *One representative of the Chittagong City Corporation to be elected by the Hindu Commissioners/Hindu Members, failing which a well reputed and pious Hindu of Chittagong City, to be nominated by the Mayor of Chittagong City Corporation to act as a member of the Shrine Committee from this category. He shall function as a member of the Shrine Committee till expiry of the term of the Committee.*
- vi) *Two Hindu representatives from the District Bar Association of Chittagong and one Hindu representative from the District Bar Association of Cox's Bazar to be reelected by the Hindu members under the supervision of the Executive Committee of the said Bar Associations.*
- vii) *One representative from the Sitakunda Pilgrimage Improvement Fund Committee (Tirtha Unnayan Committee) Chittagong City.*
- viii) *One Hindu Judicial Officer from each of the Judgeship of Chittagong and Cox's Bazar to be nominated by the respective District Judge, failing which, a well reputed Hindu Advocate to be nominated by the respective District Judges.*
- ix) *One representative of the Bangladesh Sevashram Sangha to be nominated by the Sangha at Chittagong City.*
- x) *The Mohunt shall be an ex-officio member of the Shrine Committee.*
- xi) *One representative from Bangladesh Tripura Sannatan Kalyan Parishad to be nominated by that Parishad at Khagrachari Town under the supervision of the Deputy Commissioner, Khagrachari.*

- xii) *One representative from the Adinath Mandir Sanskar Committee at Moheshkhali, District Cox's Bazar, to be nominated by that Committee under supervision of the Upazial Nirbahi Officer, Moheshkhali, Cox's Bazar.*
- xiii) *One representative from the Hindu teachers of the Chittagong University to be elected by its Hindu teachers under the supervision of the Registrar of the University of Chittagong.*
- xiv) *One Hindu representative from the Supreme Court Bar Association to be elected by the Hindu members of the said Association under the supervision of the Executive Committee of the Supreme Court Bar Association, Dhaka.*
- xv) *Two reputed Hindu gentleman whose service shall be considered beneficial to the interests of the Shrines from any place in Bangladesh to be co-opted by the Sitakunda Shrine Committee, in consultation with the collegium comprising the District Judge, Chittagong and the District Judge, Cox's Bazar."*

The learned District Judge, Chittagong in compliance of letter issued by the writ petitioner reconstituted Sitakunda Shrine Committee by order No.1232 dated 24.08.2016 comprising 22 members as per guideline given in the judgment and requested to take steps for election of the committee.

Thereafter, the writ petitioner as outgoing Secretary wrote a letter by registered post with A/D and also by hand to the all new members of the reconstituted Sitakunda Shrine Committee with a copy to the District Judge, Chittagong and Cox's Bazar for discussion about election to be held on 02.09.2016 for election of the President, Senior Vice President, Vice President, Secretary and 2(two) Assistant Secretary within 15(fifteen) days as per order No. 1232 dated 24.8.2016. On 02.09.2016 discussion was not completed

due to absent of 4 members and as such all attempts about election has been ended in failure. And on that occasion 12 members were abstained to give their consent and in spite of that only 10 members declared name of 6 members as executive showing the writ petitioner's name as Senior Vice-President. The writ petitioner by letter dated 05.09.2016 informed the matter to writ respondent No.2, District Judge, Chattogram to take steps for holding election on the ground that no election was held on 02.09.2016 and no Election Commission was formed and no election schedule was published and none of the members submitted nomination papers, and out of 22 members, 12 members did not give consent to the selected persons.

The writ petitioner again on 07.09.2016 served a notice upon all the members of reconstituted Sitakunda Shrine Committee informing them that one election commission comprising 3(three) persons as Chairman, Member Secretary and Co-Ordinator has been formed with a copy to the writ respondent No.2 and 3. The member Secretary of the Election Commission published election schedule on 04.10.2016 informing all the members and collegiums Sitakunda Shrine Committee and also through local newspapers that date of election scheduled to be held on 04.11.2016.

On 27.10.2016 Sadhon Moy Battacharjee submitted his nomination paper for the post of President, Engineer Sahdeb Chandra Baidhya submitted nomination paper for the post of Senior Vice President, Dipok Kanti Battarcharjee submitted nomination paper for the post of Vice President, the writ petitioner submitted nomination paper for the post of Secretary, Pradip Bhattacharjee submitted nomination paper

for the post of Assistant Secretary and Brojo Gopal Gosh submitted nomination paper for the post of Assistant Secretary (Moheshkhali, Cox's Bazar). All the aforesaid nomination papers accepted by the Member Secretary of Election Commission as valid.

Only 6(six) nomination papers submitted against 6 post and none of the candidate withdrawn their nomination papers and as a result the aforesaid persons were elected without contest and the Member Secretary of the Election Commission declared result on 04.11.2016 with a copy to the Collegiums through registered post and also by hand delivery and also published through local newspapers.

The writ petitioner as existing Secretary handed over charge of the office and the President of the Shrine Committee Mr. Sadhon Moy Battarcharjee accepted the writ petitioner as Secretary of the above committee and allowed the petitioner to continue works.

The writ petitioner on 18.01.2017 as Secretary of the Sitakunda Shrine committee submitted an application to the writ respondent No. 2 with a copy to writ respondent No.3 and also to all the members of the reconstituted committee for giving decision about result of election held on 04.11.2016 inasmuch as the said committee is valid as per clause 17(17) of the scheme formulated by the Appellate Division.

Thereafter, respondent No. 2 issued a notice under Memo No.7(19)(24) dated 05.01.2017 to all the members and other connected persons for holding meeting in his chamber for discussion about reformation, development, protection of

interest and other works of the pilgrimage place including Sitakunda Chandra Nath Dham.

On 11.01.2017, a meeting was held and discussion was done about the matters as mentioned in the notice dated 05.01.2017. Respondent No. 2 issued the impugned letter under Memo No. 25 (24) dated 12.01.2017 to the members of the Shrine Committee including the writ petitioner about the decision of the meeting held on 11.01.2017 informing that nominated committee members unanimously expressed their opinion to hand over charge to the selected committee formed earlier, which is not true and correct. It is also stated that collegiums District Judge Cox's Bazar also was not present in the meeting.

Challenging the above decision Sukhamoy Chakraborty claiming himself as the Secretary of the Committee, as petitioner filed Writ Petition No. 1278 of 2017 before the High Court Division. A Division Bench of the High Court Division after hearing the Rule made the same absolute and declared the circulation of notice dated 12.01.2017 is illegal and without lawful authority.

Being aggrieved by the same respondent No.4 has preferred this civil petition for leave to appeal.

Mr. Probir Neogi, learned Senior Advocate, appearing for the leave petitioner submits that the alleged election held on 02.09.2016 is ex facie in conflict with the order of the Appellate Division passed in Civil Appeal No.125 of 2004. The learned Advocate also submits that on 27.08.2016 the writ petitioner as the outgoing Secretary of the Sitakunda Shrine Committee issued a notice convening a meeting on 02.09.2016 of the members of the re-constituted

Sitakunda Shrine Committee formed on 24.08.2016 in order to elect president, Senior Vice President, Vice President, Secretary, and two Assistant Secretaries, and the said notice was sent to all the members of the re-constituted Shrine Committee formed on 24.08.2016, and in that view of the matter, the writ petitioner is estopped from challenging the constitution of the Shrine Committee on 24.08.2016, and election of its office bearers on 02.09.2016, but the High Court Division without considering these aspects of the case made the Rule absolute. Mr. Neogi finally submits that The High Court totally failed to construe and appreciate the scheme of Sitakunda Shrine Committee, and the directives contained in the this Division's judgment in Civil Appeal No. 125 of 2004 and as such the impugned judgment is liable to be set aside.

Per contra Mr. Md. Nurul Amin, learned Senior Advocate, appearing for the respondents makes his submissions in support of the impugned judgment and order passed by the High Court Division.

We have considered the submissions of the learned Advocates appearing for the respective parties, perused the impugned judgment and order of the High Court Division and other connected papers available on record.

In the instant case a pertinent question whether the writ petition, challenging the decision of Sitakunda Shrine Committee dated 12.01.2017 is amenable in writ jurisdiction, since the said committee is not a local authority or organization established by any law has to be decided first.

Mr. Nurul Amin, learned Senior Advocate, appearing for the writ petitioner-respondent tried to convince us since

the District Judge, Chattogram as the Administrator of the Sitakunda Shrine Committee presided over the meeting and took the impugned decision, as such, the writ petition can be maintainable against the said decision.

The 'Sitakunda Shrine Committee' cannot be termed or treated as a local authority or an autonomous body as the said body was not established by any law. It is a management committee of a private body, which is not performing any function in connection with the affairs of the Republic or of a local authority, as such the writ petition challenging the decision of the said private body is not within the ambit of local authority, which cannot be amenable in writ jurisdiction under Article 102 of the Constitution of the People's Republic of Bangladesh and thus, the writ petition was not maintainable.

In the case of **Chairman, Governing Body, Bangladesh Rifles School and College, Bangladesh Rifles Head Quarters, Peel Khana, Dhaka and others Vs. Md. Gholam Kibria and others**, reported in **15 MLR (AD) 497** it has been held that:

"It appears that the very writ petition was not maintainable in view of the fact that the same was filed against a non-government school namely Bangladesh Rifles School and College which is not a local body."

This Division in the case of **Upazilla Nirbahi Officer Vs. Abu Saleh Md. Harunar Rashid and others**, reported in **14 MLR, (AD) 309 and 14 BLC (AD) 92** held that:

"Further in the present case the appellant passed the impugned order not in the capacity of Upazilla Nirbahi Officer, Brahmanpara, Comilla but in the capacity as President of the Governing Body of Shahebabad Islamia Senior Fazil Madrasa, Brahmanpara, Comilla and

accordingly no writ does lie against the impugned order dated 28.5.2003 as the same has not been passed by any statutory body or local authority.”

In the instant case District Judge, Chattogram issued the impugned notice as the President of the Shitakunda Shrine Committee in regard to the affairs of the said Committee.

If we consider the above facts coupled with the above settled proposition of law, then we have no hesitation to hold that the present writ petition was not maintainable and the judgment and order passed by the High Court Division is without jurisdiction and liable to be set aside.

Since, we have heard both the parties at length; we are inclined to dispose of the civil petition for leave to appeal without granting any leave to avoid further delay in disposing of the case.

Accordingly, the civil petition for leave to appeal is disposed of. The judgment and order passed by the High Court Division is set aside. However, the learned District Judge, Chattogram is directed to take immediate steps in accordance with the case of ***Pijush Kanti Chowdhury vs Sitakunda Shrine Committee and others***, reported in ***21 BLC (AD) 55*** for the formation of the new committee within a period of 3 (three) months from the dated of receipt of this order.

C. J.

J.

J.