

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

WRIT PETITION NO. 3704 of 2023

IN THE MATTER OF:

An application under article 102 of the
Constitution of People's Republic of Bangladesh.

And

IN THE MATTER OF:

A. M. Mahbub Uddin Khokon and others

.....Petitioners

-VS-

The Secretary, Public Security Division, Ministry
of Home Affairs, Bangladesh Secretariat, Dhaka-
1000 and others

.....Respondents

Mr. A. J. Mohammad Ali, with

Mr. A.M. Mahbubuddin Khokon, with

Mr. Md. Bodruddoza, with

Mr. Md. Ruhul Quddus Kazal, with

Mr. Md. Kayser Kamal, Senior Advocates

.....For the Petitioners.

Mr. Bepul Bagmar, DAG with

Mr. Bahauddin Ahmed, AAG,

Mr. Mohammed Rezaul Hoque, AAG,

Mr. Selim Azad, AAG and

Mr. Md. Serajul Islam, AAG

.... For the respondents

The 29th March, 2023

Present :

Mr. Justice Md. Khasruzzaman

And

Mr. Justice Md. Iqbal Kabir

Md. Khasruzzaman, J:

This is an application under article 102 of the Constitution of
the People's Republic of Bangladesh.

The petitioners challenged the brutal action of the police at the Supreme Court Bar Association Building on 15.03.2023 and indiscriminate baton charge on the petitioners, learned Advocates of the Supreme Court and injuring them mercilessly and driving out the petitioners and their election agents from the polling centre by depriving their rights to participate in a free fair, impartial and credible election of the Bangladesh Supreme Court Bar Association and also prayed for a direction upon the respondents to form an enquiry committee to apprise this Court as to under what authority the police stormed the Supreme Court Bar Association Building on 15.03.2023 and 16.03.2023.

Facts stated in the writ petition in short are as follows:

On 23.02.2023 the Supreme Court Bar Association declared election schedule fixing the date of poll 15th and 16th day of March 2023 for election of the executive committee of the association for the tenure of 2023-2024. On 23.02.2023 the present executive committee of the association unanimously formed an election sub-committee headed by Senior Advocate Mr. Md. Munsurul Hoque Chowdhury as Convener to conduct the election of the association for the aforesaid tenure. In continuation of the election process, Mr. Md. Monsurul Hoque Chowdhury conducted the projection meeting on 13.03.2023 to introduce the candidates for the general members,

which continued till 7.30 p.m. After successfully completing the said projection meeting at about 8.15 p.m. the petitioners came to know that the convener of the election sub-committee, Senior Advocate Mr. Md. Munsurul Hoque Chowdhury resigned from his post for an unknown reason. At this stage, the President and the Secretary of the Supreme Court Bar Association most arbitrarily without taking any approval from the other executive committee members declared Advocate Md. Moniruzzaman as convener in order to conduct the rest of the election process of the association. The learned lawyers of the Supreme Court Bar Association raised objection to appoint Mr. Md. Moniruzzaman as convener of the election sub-committee. That the present President and the Secretary printed ballot papers under their supervision and as part of their plan to rig the election, while they were filling up the ballot papers with the said so-called acting convener along with some outsiders on the day before election i.e. on 14.03.2023 they were caught red handed. In such circumstances, the petitioners demanded a new election sub-committee to conduct the election afresh. While the petitioners and their election agents were peacefully staying at the auditorium, hundreds of police personnel stormed at the auditorium and brutally tortured the candidates, general lawyers and journalists and drove out the petitioners belonging to Jatiotabadi

Ainjibi Oikko Panel from the polling centre. It is also stated that 3(three) criminal cases were lodged by 3(three) different persons against the petitioners and others. Then Mr. A.J. Mohamamd Ali, Senior Advocate and along with others went to the Court No. 1 of the Appellate Division and thereafter, they met with the Hon'ble Chief Justice at his office and they were informed that police was not called by the Court Administration. At this stage, finding no other alternative the petitioners filed this writ petition.

Mr. A.J. Mohammad Ali, the learned Advocate for the petitioners by placing the petition along with the Annexures annexed thereto submits that on 15.03.2023 and 16.03.2023 the police personnel entered into the Supreme Court Bar Association Building and brutality tortured them which was not authorized by law, and the police personnel entered into the Court premises without any permission of the Court Administration. He further submits that police has created a media sensation by the learned lawyers of the Bar, and to restore the prestige and image of the Bar and the Bench, an enquiry should be conducted to bring the responsible police personnel to book and as such an enquiry committee should be formed.

On our quarry, Mr. Bepul Bagmar, the learned Deputy Attorney General made his submissions and also gave a letter

jointly signed by the Secretary of the Supreme Court Bar Association and the Convener of the election sub-committee of 2023-2024 of the Supreme Court Bar Association requesting the Police Commissioner, Dhaka Metropolitan Police, Dhaka to deploy police forces at Supreme Court Bar Association and also requesting for taking necessary steps for free and fair election of the Bar. He further submits that 3(three) criminal cases were pending against the petitioners and others and if any Rule is issued then the investigation of the said 3 cases will be hampered. He also submits that the petitioners raised some factual points, which are not amenable under judicial review.

Heard the learned Advocate for the petitioners and perused the writ petition and the annexures annexed thereto.

It is stated in paragraph Nos. 11, 12 and 13 of the writ petition that (1) Md. Moniruzzaman lodged Shahbag Police Station Case No. 30 dated 15.03.2023 under sections 143, 323, 448, 380, 427 and 506 of the Penal Code against the present petitioners and others, (2) Md. Robiul Hasan lodged Shahbag Police Station Case No. 31 dated 15.03.2023 under sections 143, 447, 448, 323, 427, 380 and 506 of the Penal Code and (3) Golap Uddin Mahmud, Sub-Inspector of Police, DMP, Shahabag lodged Shahbag Police Station Case No. 32 dated 16.03.2023 under sections 143, 149, 186, 332,

333, 353, 427, 506 and 34 of the Penal Code against the same petitioners and others, and these cases are pending for investigation.

It appears from Annexure-A that on 16.03.2023 a report was published in the ‘Daily Prothom Alo’ and the 1st para of the said news is quoted below:

“উত্তেজনা ছিল মঙ্গলবার রাত থেকেই । গতকাল বুধবার দিনের শুরুতেই আওয়ামী লীগ ও বিএনপিপন্থী আইনজীবীদের মধ্যে কথা-কাটাকাটি, ধাক্কাধাক্কি হয়। নির্বাচন পরিচালনা সংক্রান্ত কোন উপকমিটির মাধ্যমে সুপ্রীম কোর্ট আইনজীবী সমিতির এবারের নির্বাচনে ভোট গ্রহণ হবে, এমন প্রশ্নে তর্কে জড়ান তারা ।”

It further appears from the Annexure-B that the “Daily New Wage” published a news that:

“At least 24 people including lawyers and journalists were injured on Wednesday by police action on Supreme Court premises as lawyers from the ruling Awami League and the main opposition Bangladesh Nationalist Party locked in chaos over election to the Supreme Court Bar Association”

It also appears that similar type of news was published in the “Daily Ittefaq” on 16.03.2023 stating that:

“সুপ্রীম কোর্ট আইনজীবী সমিতির দুই দিনব্যাপী নির্বাচনের প্রথমদিনে ভাংচুর, হট্টগোল, বিক্ষোভ ও সংবাদিকদের পেটানোর ঘটনা ঘটেছে। একতরফা

ভোট গ্রহণকে কেন্দ্র করে আওয়ামী লীগ ও বিএনপি পন্থি আইনজীবীদের মধ্যে
এই হাংগামা ঘটনা ঘটে।”

The petitioners also annexed another two news papers namely- ‘the daily Samokal’ and ‘the Daily Manabzamin’. The reports of the said newspapers were similar as quoted above. Thus it clearly appears that an excitement was very much present from Tuesday night i.e. on 14.03.2023, the day before holding the election. The learned Advocates of the Supreme Court Bar Association were divided sharply in two groups and a serious altercation had been taken place on the 1st day of election i.e. on 15.03.2023 amongst the learned Advocates of the Supreme Court Bar Association that they were arguing and pushing, and the learned Advocates also chased each others. As a result, an anxiety raised throughout the Bar.

It is stated in the writ petition that police was not called by the Supreme Court Administration. But the Secretary of the Supreme Court Bar Association and the Convener of the election sub-committee issued a letter to the Police Commissioner, Dhaka Metropolitan Police, Dhaka on 11.03.2023 requesting him to deploy police personnel at the Supreme Court Bar Association. The relevant portion of the said letter is quoted below:

“পুলিশ কমিশনার,
ঢাকা মেট্রোপলিটন পুলিশ,

ঢাকা।

জনাব,

আপনার অবগতি এবং প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য জানানো যাচ্ছে যে, বাংলাদেশ সুপ্রীমকোর্ট আইনজীবী সমিতির কার্যকরী কমিটির নির্বাচন (২০২৩-২০২৪) আগামী ১৫ ও ১৬ মার্চ, ২০২৩ ইং তারিখ বুধ ও বৃহস্পতিবার দুই দিন ব্যাপী অনুষ্ঠিত হবে। সুন্দর ও সুষ্ঠু ভাবে নির্বাচন পরিচালনার জন্য আগামী ১৫/০৩/২০২৩ ইং তারিখ সকাল ৮টা হতে ১৭/০৩/২০২৩ ইং তারিখ রাত ১২টা পর্যন্ত নির্বাচন চলাকালীন সময়ে সার্বক্ষণিক পুলিশ মোতায়েন রাখার জন্য আপনার সহযোগীতা এবং বিশেষ ব্যবস্থা গ্রহণের জন্য অনুরোধ করা যাচ্ছে।

ধন্যবাদান্তে-

আপনার বিশ্বস্ত,

(স্বাক্ষর)

(স্বাক্ষর)

(বীর মুক্তিযোদ্ধা মোঃ মনসুরুল হক চৌধুরী)

(মোঃ আবদুন নূর দুলাল)

আহ্বায়ক

সম্পাদক

নির্বাচন সাব-কমিটি ২০২৩-২০২৪

বাংলাদেশ সুপ্রীম কোর্ট আইনজীবী সমিতি।

বাংলাদেশ সুপ্রীম কোর্ট আইনজীবী সমিতি।

The learned Advocate for the petitioners admitted that similar type of letters were issued earlier. Thus it can be said that the police forces entered into at the Supreme Court Bar Association on the basis of the requesting letter dated 11.03.2023 jointly signed by the Secretary and the Convener of the election sub-committee. The learned Advocate for the petitioners filed this writ petition for only illegal brutal action of the police personnel upon the learned lawyers. We have already stated that there was an excitement of the Supreme Court Bar Association and the learned lawyers were

arguing, pushing and also chasing each other and it was revealed from the reports of the daily news papers. Thus when there is a chance of detriment of the public peace, the police authority has every right to take necessary steps and enter in any place to maintain law and order situation in accordance with law. The learned Advocates of the petitioners submitted that this type of police action was never happened in the Supreme Court premises.

Thus we are of the view that if it is done by the police forces, it is no doubt unexpected, undesirable and punishable offence.

The petitioners made their submissions depending on the reports of the newspapers reports where some factual matters have been narrated. Thus it is no doubt that some factual questions are involved in this matter to determine the case. The petitioners also prayed for a direction to form an enquiry committee to apprise this Court as to under what authority police forces stormed in the Supreme Court premises. **In the present case, if police forces do any wrongful act in the Supreme Court premises, they should be brought into trial.** For this, the petitioners have to go through a proper forum because without availing appropriate forum against the alleged brutal police action praying to form an enquiry committee under judicial review is not tenable.

In the present case, according to the submissions of the petitioners the police forces did wrongful act. On such situation, it requires to bring those police forces under the law and take action against those, and such grievances may have been agitated in the appropriate forum. Nevertheless, the action of the police forces is unexpected, undesirable and painful. Knowing such situation, we feel pain inside. Thus we have to create a good atmosphere in the Supreme Court premises including the Bar Association to uphold the dignity of the learned lawyers.

Thus the application is disposed of with the above observations.

Communicate the order.

Md. Iqbal Kabir, J.

I agree.