

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

**Writ Petition No. 2970 of 2023**

**In the matter of:**

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

- **AND-**

**In the matter of:**

Md. Saiful Islam.

.....**Petitioner.**

-**Versus-**

The Government of the People's Republic of  
Bangladesh, represented by the Chief  
Election Commissioner, Election  
Commission Secretariat, Agargaon, Sher-e-  
Bangla Nagar, Dhaka and others,

..... **Respondents.**

Mrs. Syeda Nasrin, Advocate

.....**For the petitioner.**

Mr. Suvra Chakravorty, Advocate

.....**For respondent No.5.**

**Judgment on: 12.12.2023**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**and**

**Mr. Justice K.M. Zahid Sarwar**

**Md. Khasruzzaman, J.**

In the application under article 102 of the Constitution,  
on 13.03.2023 the *Rule Nisi* under adjudication was issued in  
the following terms:

*Let a Rule Nisi be issued calling upon the respondent  
Nos. 1 to 5 to show cause as to why the judgment and*

*order dated 16.02.2023 passed by the Judge of the Election Appellate Tribunal, Sirajgonj in Election Tribunal Appeal No. 02 of 2022 allowing the appeal and thereby reversing the judgment and order dated 20.09.2022 passed by the Senior Assistant Judge, Sadar, Sirajgonj in Election Tribunal Case No. 02 of 2022 dismissing the case should not be declared to have been passed 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.*

Facts relevant for disposal of the Rule, in short, are that respondent No.5, Md. Mukul Hossain, as applicant filed Election Tribunal Case No. 02 of 2022 before the Election Tribunal, Sirajgonj for recounting the ballot papers for the votes of 9 No. Ward General Member of No.2 Rajapur Union Parishad under Belkuchi Police Station, Sirajgonj, held on 28.11.2021 stating *inter-alia* that the respondent No.5 applicant participated in the election as General Member with the symbol “Football”. The writ petitioner Md. Saiful Islam also participated in the said election with symbol “Hen”. The election was held peacefully at Naggati Government Primary School on 28.11.2021. In that election, opposite party No.3 of election petition performed his election duties as Presiding Officer, opposite party Nos. 4 to 10 performed their election

duties as Assistant Presiding Officers and opposite party Nos. 11 to 24 performed their election duties as Polling Officers. In that polling center, number of total votes was 2476. Out of them, 1943 voters cast their votes and 533 voters remained absent from casting their votes. It is stated that before starting the recounting of votes, the Presiding Officer took signature of all polling agents of the contesting parties on the blank result sheet. After recounting the votes, the applicant (candidate having Football symbol) got 998 votes and the opposite party No.25 having Hen symbol (present petitioner) got 936 votes. The votes of 9 voters were cancelled. Accordingly, the applicant is entitled to be declared as General Member. Thereafter, the people of opposite party No.25 (candidate of Hen symbol) started rioting and thereby made the situation worst and as such, without declaring the result in the said center, the Presiding Officer declared the result of the vote in Upazila Parishad. Thereafter, on the following day, the applicant went to the office of the Returning Officer to see the result sheet. On going through the result sheet the applicant surprised that the opposite party No.25 was shown to have got 973 votes and the applicant was shown to have got 961 votes in place of 998 votes. As such, the applicant made oral and written application for recounting the votes. But the Returning

Officer did not make any response to the prayers. Ultimately, the result was sent to the Election Commission and thereafter, the Election Commission published the result in the Bangladesh Gazette declaring the opposite party No.25 as General Member of the said ward. It is alleged that the Returning Officer in connivance with the Presiding Officer prepared the fabricated result sheet in order to give illegal benefit to the opposite party No.25, which is liable to be cancelled. Under such circumstances, the respondent No.5 as applicant, stating the above facts, filed the election petition before the Election Tribunal, Sirajgonj with a prayer for recounting the votes.

Opposite Party No.25 (present writ petitioner) contested the case by filing written objection, contending *inter alia* that on 28.11.2021 the election was fairly held. After counting the votes, the Presiding Officer declared the result at polling center and the agents of both the candidates signed on the result sheet. It is stated that the opposite party No. 25 got 973 votes and applicant (respondent No.5 herein) got 961 votes. Accordingly, the result of the votes was published in the official gazette on 18.12.2021 showing the name of the opposite party No.25 as elected General Member of Ward No.09. Thereafter, he took oath on 12.01.2022 and since then

he has been performing his duty and as such he has prayed for dismissing the election petition (Annexure-B).

The learned Senior Assistant Judge, Sadar, Sirajgonj after hearing the parties and on perusal of the materials on record, vide his judgment and order dated 18.09.2022 dismissed the election case (Annexure-C).

Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 18.09.2022 passed by the learned Senior Assistant Judge, Sadar, Sirajgonj, the applicant (respondent No.5 herein) as appellant preferred Election Tribunal Appeal No.02 of 2022 before the Election Appellate Tribunal, Sirajgonj. The learned Judge of the Election Appellate Tribunal, after hearing the parties and on perusal of the materials on record, vide its judgment and order dated 16.02.2023 allowed the appeal and thereby set aside the judgment and order passed by the Election Tribunal in Election Tribunal Case No. 02 of 2022 with a direction upon the Election Tribunal to recount the member votes of Naggati Government Primary School and thereby to dispose of the election petition vide Annexure-E to the writ petition.

Under such circumstances, the opposite party No.25 as writ petitioner has challenged the aforesaid judgment and order dated 16.02.2023 passed by the Election Appellate

Tribunal in Election Tribunal Appeal No.02 of 2022 and obtained the *Rule Nisi* and an order of stay.

Against the interim order of stay, the respondent No.5 filed Civil Petition for Leave to Appeal No. 1155 of 2023 before the Appellate Division. The Appellate Division ultimately vide its order dated 19.06.2023 disposed the civil petition with a direction to dispose of the *Rule Nisi* and the parties were directed to maintain *status quo* in respect of present position of General Member of Ward No.09 of No.2 Razapur Union Parishad, Belkuchi, Sirajgonj till disposal of the *Rule Nisi*.

While the *Rule Nisi* was pending, the writ petitioner has filed an application through his newly appointed Advocate Ms. Syeda Nasrin along with a prayer for issuance of supplementary *Rule Nisi*. It is stated in the application for issuance of supplementary *Rule Nisi* that in the meantime, in compliance of the judgment and order dated 16.02.2023 passed by the Election Appellate Tribunal, the Election Tribunal and Senior Assistant Judge, Sadar, Sirajgonj recounted the ballot papers and passed the fresh judgment and order dated 01.03.2023 declaring the respondent No.5 (candidate of Football symbol) as General Member of Ward No.09 of No.2 Razapur Union Parishad (Annexure-K). But at the time of filing the instant writ petition, the petitioner did not challenge the said judgment and order dated 01.03.2023

passed by the Election Tribunal, Sadar, Sirajgonj which is bona fide mistake on the part of the learned Advocate and as such, the application has been filed for issuance of a supplementary *Rule Nisi*.

Having heard the learned Advocate and on perusal of the application, this Court found *prima facie* case for issuance of a supplementary *Rule Nisi* in the following terms:

*“Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the order dated 01.03.2023 passed by the Election Tribunal and Senior Assistant Judge, Sadar, Sirajgonj in Election Tribunal Case No.02 of 2022 declaring the respondent No.5 i.e. Md. Mukul Hossain (Football Symbol) elected as General Member of Ward No.9 of No.2 Rajapur Union Parishad (Annexure-K to the application) should not be declared to have been passed 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.”*

Since the *Rule Nisi* was ready for hearing and it was fixed for hearing in compliance of the order dated 19.06.2023 passed by the Appellate Division in CPLA No.1155 of 2023.

Respondent No.5 filed *affidavit-in-opposition* denying the material statements made in the writ

petition and contending *inter-alia* that as per judgment and order dated 16.02.2023 passed by the Election Appellate Tribunal in E.T. Appeal No.02 of 2022, the election tribunal recounted the votes and vide judgment and order dated 01.03.2023 declared the respondent No.5 as elected General Member of Ward No.09 of No.2 Rajapur Union Parishad. But the petitioner did not challenge the said judgment and order dated 01.03.2023 declaring the respondent No.5 as elected General Member in the instant writ petition which was filed on 05.03.2023 after passing the said order dated 01.03.2023. As such, the writ petition is not maintainable due to suppression of material facts and also due to fact that the petitioner did not come with clean hands. Consequently, the *Rule Nisi* is liable to be discharged.

Mrs. Syeda Nasrin, the learned Advocate appearing on behalf of the petitioner submits that as per section 23(1) of the Local Government (Union Parishad) Ain, 2009, the Election Appellate Tribunal shall consist of one Judicial Officer and another officer from Executive Department and the Election Commission has already constituted the Election Appellate Tribunal with Joint District and Sessions Judge, Court No.1, Sirajgonj (Member No.1) and Additional District



Magistrate, Sirajgonj. Referring to the impugned judgment and order, she submits that the appeal was heard by Member No.1 only and as such, the impugned judgment and order suffers from *coram non judice* and consequently, order passed by the Election Tribunal on the basis of the impugned judgment and order of the Election Appellate Tribunal is not tenable in the eye of law. And as such, the impugned judgment and order passed by the Election Appellate Tribunal as well as the order dated 01.03.2023 passed by the Election Tribunal on the basis of the aforesaid impugned judgment and order is liable to be declared to have been passed without lawful authority and is of no legal effect. Therefore, she prays that both the original *Rule Nisi* and the supplementary *Rule Nisi* are liable to be made absolute.

Mr. Suvra Chakravorty, the learned Advocate appearing on behalf of the respondent No.5 submits that the Election Appellate Tribunal did not commit any illegality in directing the Election Tribunal to recount the votes while passing the judgment and order. The Election Tribunal has rightly recounted the votes and declared the respondent No.5 as elected General Member and as such, the *Rules Nisi* may kindly be discharged.

We have heard the learned Advocates of the respective parties and perused the writ petition and affidavit-in-

opposition along with other papers annexed thereto as well as the law and decisions as referred to by the parties.

It appears that the election petition was lodged by the respondent No.5 on the allegation stating *inter alia* that on 28.11.2021 election was held peacefully. After recounting of the votes, it was found that the respondent No.5 got 998 votes whereas the present petitioner got 936 votes. But before the election result could be declared, the supporters of the symbol of Hen (present petitioner) started rioting, and in the long run, the Presiding Officer in connivance with the candidate of the symbol of 'Hen' changed the result sheet by practicing fraud and thereby declared the petitioner herein as elected General Member. In this circumstances, the respondent No.5 made oral and written application for recounting the votes. But the Returning Officer did not make any response to the same. Hence, the respondent No.5 as applicant filed the election petition before the Election Tribunal. Ultimately, the Election Tribunal vide its judgment and order dated 18.09.2022 dismissed the election case.

The judgment of the Election Tribunal was challenged before the Election Appellate Tribunal in E.T. Appeal No.02 of 2022. Ultimately the Election Appellate Tribunal vide his judgment and order dated 16.02.2023 allowed the appeal and directed the Election Tribunal to recount the votes. In

complying with the aforesaid judgment and order dated 16.02.2023 the Election Tribunal recounted the votes and by order dated 01.03.2023 declared the respondent No.5 as elected General Member.

The point raised by the learned Advocate for the petitioner in this *Rule Nisi* is that the impugned judgment and order is *coram non judice* and consequently, the order dated 01.03.2023 based on the impugned judgment and order is also not tenable in the eye of law.

In the circumstances, we need to justify as to whether the Member No.1 had any jurisdiction to entertain the said appeal as that goes to the very root of all issues in so far the writ petition is concerned.

Admittedly, the election appeal was heard and disposed of by the Election Appellate Tribunal consisting of two Members i.e. Member No.1 and Member No.2. But at the time of hearing and passing the impugned judgment, Member No.2 was not present. On perusal of the judgment it appears that the judgment and order has been signed by Member No.1 only i.e. by the learned Judge, Election Appellate Tribunal, Sirajgonj. So, the judgment and order is *coram non judice*. To appreciate the point, we need to go through section 23(1) of the Local Government (Union Parishad) Act, 2009 which reads as follows:

“ ২৩।(১) এই আইনের অধীনে নির্বাচন সম্পর্কিত বিরোধ নিষ্পত্তির ক্ষেত্রে নির্বাচন কমিশন, সরকারী গেজেটে প্রজ্ঞাপনের দ্বারা, একজন উক্ত উপযুক্ত পদমর্যাদার বিচার বিভাগীয় কর্মকর্তার সমন্বয়ে প্রয়োজনীয় সংখ্যক নির্বাচনী ট্রাইব্যুনাল ও একজন উপযুক্ত পদমর্যাদার বিচার বিভাগীয় কর্মকর্তা ও একজন উপযুক্ত পদমর্যাদার নির্বাহী বিভাগের কর্মকর্তার সমন্বয়ে প্রয়োজনীয় সংখ্যক নির্বাচনী আপিল ট্রাইব্যুনাল গঠন করিবে।”

So, this being the position in law, we are of the view that the judgment and order is *coram non judice* as the Member No.1 alone did not have jurisdiction to represent the Election Appellate Tribunal. On the point of *coram non judice*, this Court has settled the issue and directed to dispose of the matter afresh by the Election Appellate Tribunal in accordance with law.

In the present case, the following cases are relevant: **(1) Hasina Khaton and others Vs. Bangladesh and others, 48 DLR(AD)13; (2) Salim (Md) Vs. Assistant Commissioner of Land and Chairman, Settlement Board and others, 54 DLR 72; (3) Secretary, Ministry of Public Works Vs. Bangladesh Abandoned Buildings 18 BLD(HCD) 583 and (4) an unreported case of A.K. Traders Limited Vs. Government of Bangladesh and others (Writ Petition No.5930 of 2018 judgment delivered on 11.10.2018).**

Consequently, the observations and discussions as made by the Election Appellate Tribunal in the judgment and order dated 16.02.2023 have become immaterial for the very

fact that the decision became a decision of *corum non-judice*. Therefore, we are of the view that the matter should be heard afresh by a competent Election Appellate Tribunal consisting of Member No.1 and Member No.2. It appears from Annexure-L to the application for issuance of supplementary *Rule Nisi* that the Election Appellate Tribunal for Sirajgonj district was constituted by Joint District and Sessions Judge, Joint District and Sessions Judge, First Court, Sirajgong (Member No.1) and Additional District Magistrate, Sirajgonj (Member No.2).

Accordingly, the judgment and order dated 16.02.2023 and order dated 01.03.2023 are hereby set aside.

The Election Appellate Tribunal consisting of Joint District and Sessions Judge, First Court, Sirajgonj (Member No.1) and Additional District Magistrate, Sirajgonj (Member No.2) to hear and dispose of E.T. Appeal No. 02 of 2022 in accordance with law within 2 (two) months from the date of receipt of this order.

In Civil Petition for Leave to Appeal No. 1155 of 2023, on 19.06.2023 the Appellate Division directed to parties to maintain statuesque in respect of present position of General Member of Word No. 09 of No. 02 Razapur Union Parishad, Belkuchi, Sirajgonj till disposal of the Rule.

Considering the direction of the Appellate Division, we think that it would be better to maintain the aforesaid status quo till disposal the appeal.

Thus the parties are directed to maintain status quo in respect of the present position of General Member of Ward No.09 of No.2 Rajapur Union Parishad, under Belkuchi Police Station, Sirajgonj till dispose of the appeal.

In the result, the both the *Rules Nisi* are disposed of with the above directions.

There will be no order as to costs.

Communicate the order.

**K M Zahid Sarwar, J.**

I agree.