

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 1243 OF 2023

IN THE MATTER OF:

An application under article 102 (2) (a) (i) &
(ii) of the Constitution of the People's
Republic of Bangladesh.

AND

IN THE MATTER OF:

Md. Anwar Hossain

-----Petitioner

-Versus-

The Government of the People's Republic of
Bangladesh, represented by the Secretary,
Secondary and Higher Education Division,
Ministry of Education, Secretariat Building,
Ramna, Dhaka and others.

-----Respondents

Mr. Md. Humayun Kabir, Advocate with
Mr. Haripada Barman, Advocate and
Mrs. Taslima Yeasmin, Advocate

-----For the petitioner

Md. Saidul Alam Khan, Advocate

-----For the respondent No.10

Judgment On: 21.11.2023

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
30.01.2023 the *Rule Nisi* was issued calling upon the respondents to

show cause as to why the election result dated 05.09.2022 contained in memo No. উমাশিঅ/চিরির/দিনাজ/২০২২/৬৭৬ published by the Assistant Upazila Secondary Education Officer, Chiribandor, Dinajpur (respondent No.8) as the Presiding Officer, Managing Committee Election, 2022, Hariharpur High School, Chirirbandor, Dinajpur in violation of regulation 15(2) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্ণিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯” (Annexure-C) should not be declared to have been issued without lawful authority and is of no legal effect and further as to why they should not be directed to appoint the Presiding Officer of the election of the managing committee of the Hariharpur High School, Chirirbandor, Dinajpur in complying with the mandatory requirement of regulation 15(2) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্ণিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯ and/or pass such other or further order or orders as to this Court may seem fit and proper.

It is noted that during pendency of the instant writ petition, on 13.04.2023 the Inspector of Schools, Board of Intermediate and Secondary Education, Dinajpur (respondent No.4) approved the managing committee of the Hariharpur High School, Chirirbandor,

Dinajpur contained in memo No. 5/S/1184/1762 (06) dated 13.04.2023 (Annexure-E).

Upon consideration of the submissions made by the learned Advocate for the petitioner, on 16.05.2023 a supplementary *Rule Nisi* was issued calling upon the respondents to show cause as to why the office order contained in memo No. 5/S/1184/1762 (06) dated 13.04.2023 issued under the signature of the Inspector of Schools, Board of Intermediate and Secondary Education, Dinajpur (respondent No. 4) approving the managing committee of the Hariharpur High School, Chirirbandar, Dinajpur without complying the mandatory requirements of regulations 15(2) & 29(3) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা-২০০৯” (Annexure-E) 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. At the time of issuance of the supplementary *Rule Nisi* the operation of the memo dated 13.04.2023 was stayed.

That against the interim order dated 16.05.2023 the respondent No.10 filed Civil Petition for Leave to Appeal No.1814 of 2023 and after hearing the parties, on 16.07.2023 the Judge-In-Chamber passed an order in the following terms: “পক্ষগণকে বিরোধীয় বিষয়ে ০৮ (আট)

সপ্তাহের জন্য স্থিতি অবস্থা বজায় রাখার নির্দেশ দেওয়া হলো। তবে, পক্ষদ্বয় হাইকোর্ট বিভাগে বিচারাধীন মামলাটি আইন অনুযায়ী নিষ্পত্তি করতে পারবেন।”

In view of the above order dated 16.07.2023 in Civil Petition for Leave to Appeal No.1814 of 2023, both the parties jointly mentioned the matter before us for disposal of the matter.

Pertinent facts necessary for disposal of the *Rule Nisi* are that the petitioner is the father of a student named Anjuman Ara Rikta, Class-VIII, Roll No.05 and he is the voter (guardian category) of the Managing Committee Election, 2022 of the Hariharpur High School, Police Station-Chirirbandor, District-Dinajpur. Since he is a guardian and voter of the school, he has responsibility to protect the interest of the school. If any illegality is found to be committed in respect of the school, he can raise his voice and take proper legal action as a representative of the school and as such the petitioner has *locus standi* to file the writ petition challenging the legality and propriety of the election result contained in memo No. উমাশিঅ/চিরির/দিনাজ/২০২২/৬৭৬ dated 05.09.2022 published by the Assistant Upazila Secondary Education Officer, Chiribandor, Dinajpur (respondent No.8) as the Presiding Officer of the Managing Committee Election, 2022, Hariharpur High School, Chirirbandor, Dinajpur in violation of regulation 15(2) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯” and also seeking a direction upon

the respondents to appoint the Presiding Officer of the election of the managing committee of the Hariharpur High School, Chirirbandor, Dinajpur in complying with the mandatory requirement of regulation 15(2) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯”. The Upazila Nirbahi Officer, Chirirbandor, Dinajpur (respondent No.6) appointed the Assistant Upazila Secondary Education Officer, Chirirbandor, Dinajpur (respondent No.8) as the Presiding Officer which is clear violation of regulation 15 (1)(2) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯” under memo No.05. 55. 2730. 000. 02. 072. 22. 838 dated 08.08.2022 (Annexure-A). After nominating the respondent No.8 as the Presiding Officer for holding election of the managing committee of the school, he published election schedule on 11.08.2022 wherein on 05.09.2022 was fixed for holding election (Annexure-B) and he completed the election process, and on 05.09.2022 the Assistant Upazila Secondary Education Officer, Chirirbandor, Dinajpur (respondent No.8) published the election result contained in memo No. উমাশিঅ/ চিরির/ দিনাজ/ ২০২২/ ৬৭৬ dated 05.09.2022 (Annexure-C). In this backdrop, the petitioner filed this writ petition and obtained the present *Rule Nisi* and a supplementary Rule.

The respondent No.10 contested the *Rule Nisi* but he did not file any affidavit-in-opposition to controvert the statements as made in the writ petition.

Mr. Md. Humayun Kabir, the learned Advocate for the petitioner submits that the *Rule Nisi* and the supplementary *Rule Nisi* are liable to be made absolute on the following grounds:

- (i) That the appointment of the Presiding Officer of the election of the managing committee of the Hariharpur High School, Chirirbandor, Dinajpur is clear violation of the provision of regulation 15(2) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯”।
- (ii) That under regulation 15(2) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯”, the Assistant Upazila Secondary Education Officer, Chirirbandor, Dinajpur (respondent No.8) has no power and jurisdiction to conduct any election of the managing committee of any non-government school as a Presiding Officer and as such the entire election process has been vitiated for non-compliance of the provisions of the Regulations, 2009.

(iii) That the approval of the managing committee as provided by regulation 29(3) of the Regulations, 2009 has to be approved by the Board in its meeting but not by the Chairman in his individual capacity. In the instant case, the approval of the managing committee of the school by the Chairman of the Board (Annexure-E) is a violation of regulation 29(3) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা-২০০৯”।

Mr. Bepul Bagmar, the learned Deputy Attorney General submits that under the National Pay Scale, 2015 the government decided to remove class divisions in government service and the employees would be recognized as per their Grade. Respondent No. 8, Presiding Officer, being a Grade 7 officer will be recognized as a 1st class government officer.

Mr. Saidul Alam Khan, the learned Advocate for the respondent No.10 submits that the *Rule Nisi* and the supplementary *Rule Nisi* are liable to be discharged on the following grounds:

- (i) That the respondent No.8, the Assistant Upazila Secondary Education Officer, at present draws his salary in the range of 7th Grade as per present National Pay Scale and his monthly basic salary's range in the National Pay Scale under Grade 7 is from 29,000 BDT (lowest) to 63,410 BDT. So, he is a first class government officer by

dint of the National Pay Scale and Service Rules in this regard.

- (ii) That Title Suit No.122 of 2022 was filed by some of the guardians challenging the election result of the managing committee of Hariharpur High School dated 05.09.2022 with a further declaration that the appointment of respondent No. 8 as Presiding Officer of Managing Committee Election, 2022 of the school is illegal and not binding upon them, and the suit is now pending. At the same time, this petitioner who is also a guardian of the school has preferred instant writ petition by challenging the appointment of respondent No.10 as the Chairman and others as members of the managing committee of the school approved by the Board. The writ petition is filed with the self same matter with modified prayer which is redundant and it may cause conflicting decision regarding the legality of the managing committee. In view of the facts the instant writ petition is not maintainable.
- (iii) That section 17 read with section 11(4) of the Intermediate and Secondary Education Ordinance, 1961 clearly provides that the Board itself is the executive of its own and is represented by the Chairman of it. So, the Chairman has lawful authority to issue the impugned

office letter dated 13.04.2023 by approving the managing committee of the school, hence no violation has been caused in issuing the impugned office order dated 13.04.2023. Moreover, section 33 of the Intermediate and Secondary Education Ordinance, 1961 provides that “no act or proceedings taken under this Ordinance shall be invalid on the ground merely of-

- (a)
- (b)
- (c) any defect or irregularity not affecting the merits of the cases.”

- (iv) That the petitioner is a merely guardian of a student, he has no *locus standi* to file this writ petition as he is not an “aggrieved person” and as such this writ petition is not maintainable.

We have heard the learned Advocates for both the parties and perused the writ petition and the annexures and other relevant papers.

It appears from Annexure-A that on 08.08.2022 the Upazila Nirbahi Officer, Chirirbandor, Dinajpur (respondent No.6) appointed the Assistant Upazila Secondary Education Officer, Chirirbandor, Dinajpur (respondent No.8) as the Presiding Officer for the election of the managing committee of the Hariharpur High School, Chirirbandor, Dinajpur. It further appears from the Annexure-B that

on 11.08.2022 the Assistant Upazila Secondary Education Officer (respondent No. 8) published an election schedule wherein on 05.09.2022 was fixed for holding election. It further appears from Annexure-C that on 05.09.2022 the Assistant Upazila Secondary Education Officer (respondent No. 8) declared the result of the election. It also appears from Annexure-E that on 13.04.2022 the Inspector of Schools, Board of Intermediate and Secondary Education, Dinajpur (respondent No. 4) approved the managing committee of the school.

Now, the following questions are required to be decided:

- (I) Whether the appointment of the Presiding Officer of the managing committee of the school is lawful or not?
- (II) Whether the post of Assistant Upazila Secondary Education Officer, Chirirbandor, Dinajpur is first class or not?
- (III) Whether the approval of the managing committee of the school is lawful or not?
- (IV) Whether the petitioner has sufficient *locus standi* to file the instant writ petition or not?

For better understanding regulation 15(2) of the Regulations, 2009 is quoted below:

১৫। প্রিজাইডিং অফিসার নিয়োগ।

- (১)
- (২) জেলা প্রশাসক বা, ক্ষেত্রমত, উপজেলা নির্বাহী অফিসার
অনধিক সাত দিনের মধ্যে সংশ্লিষ্ট গভর্নিং বডি বা, ক্ষেত্রমত,
ম্যানেজিং কমিটির কোন সদস্য বা সংশ্লিষ্ট বেসরকারী শিক্ষা
প্রতিষ্ঠানের চূড়ান্ত ভোটার তালিকায় অন্তর্ভুক্ত কোন ব্যক্তি
ব্যতীত, কোন প্রথম শ্রেণীর সরকারী কর্মকর্তাকে প্রিজাইডিং
অফিসার নিয়োগ করিবেন।

On perusal of the provision of regulation, it appears that under regulation 15(2) the Presiding Officer must be 1st class government officer for conducting the election of governing body or managing committee of any non government institution. The petitioner has claimed that Assistant Upazila Secondary Education Officer is not a 1st class government officer. On the other hand, the respondents have claimed that respondent No. 8, Presiding Officer was appointed as per regulation 15(2) of the Regulations, 2009. Respondent No. 8 enjoys the facilities of Grade 7 under National Pay Scale, 2015. Here it is mentioned that Assistant Upazila Secondary Education Officer may be enjoy the facilities of Grade 7 officer under National Pay Scale, 2015, i.e. 1st class government officer but it does not mean that the post of Assistant Upazila Secondary Education Officer is a 1st class government officer as it requires a declaration by notification to be a 1st class officer. The learned Deputy Attorney General or the respondent finds difficulties to show any notification declaring the

respondent No. 8 as 1st class officer. Thus the appointment of respondent No. 8 as Presiding Officer for conducting election of the managing committee of the school was clear violation of regulation 15(2) of the Regulations, 2009.

In the present case, since the Presiding Officer for conducting election of the managing committee of the school was not appointed by following regulation 15(2) of the Regulations, 2009 which have been discussed above, the subsequent activities of the Presiding Officer were illegal.

For easy reference regulation 29(3) of the Regulations, 2009 is quoted below:

২৯। বোর্ডকে অবহিতকরণ, প্রজ্ঞাপন জারী, ইত্যাদি।-

(১)

(২)

(৩) ম্যানেজিং কমিটির সদস্য ও সভাপতি নির্বাচন সম্পন্ন হইবার অনধিক তিন দিনের মধ্যে প্রতিষ্ঠান প্রধান নির্বাচিত ব্যক্তিগণের পূর্ণ নাম ও ঠিকানা এবং সদস্য নির্বাচনে প্রিজাইডিং অফিসার কর্তৃক প্রকাশিত ফলাফল বিবরণীর একটি কপি ও সভাপতি নির্বাচনের জন্য অনুষ্ঠিত সভার কার্যবিবরণীর সত্যায়িত অনুলিপিসহ কমিটি অনুমোদনের জন্য বোর্ডে প্রেরণ করিবেন এবং বোর্ড কমিটি অনুমোদনপূর্বক উহা প্রজ্ঞাপন আকারে জারী করিবে।

Section 2(a) of the Intermediate and Secondary Education Ordinance, 1961 provides that:

(a) “Board” means the Board of Intermediate and Secondary Education, Dhaka, established under sub-section (1) of section 3 and shall include a Board established under sub-section (1) of section 3A.

It appears from the approval letter dated 13.04.2023 of the managing committee (Annexure-E) that on the basis of an order of the Chairman of the Board of Intermediate and Secondary Education, Dinajpur, the Inspector of Schools (respondent No. 4) issued the approval order of the managing committee of the school.

Thus it can easily be said that the managing committee of the school was approved by the Chairman of the Board instead of ‘Board’ as defined in section 2(a) of the Ordinance, 1961. Hence, the Chairman of the Board has violated regulation 29(3) of the Regulations, 2009 approving the managing committee of the school which can not be sustained in law and the same has been settled in a case of Alhaj Abdul Kadeer Vs. Government of the People’s Republic of Bangladesh and others, 15 MLR 375.

From the above discussions, we are of the view that firstly, appointment of the Presiding Officer has been made in violation of regulation 15(2) and secondly, the approval of the managing

committee of the school has been made in violation of regulation 29(3) of the Regulations, 2009.

In view of the above discussions, we find merit in the Rules.

In the result, both the *Rules Nisi* are made absolute without any order as to costs.

Accordingly, the memo No. উমাশিঅ/চিরির/দিনাজ/২০২২/৬৭৬ dated 05.09.2022 published by the Assistant Upazila Secondary Education Officer, Chiribandor, Dinajpur (respondent No.8) as the Presiding Officer of Managing Committee Election, 2022 of the Hariharpur High School, Chirirbandor, Dinajpur (Annexure-C) is hereby declared to have been issued without lawful authority and is of no legal effect and the memo No. 5/S/1184/1762 (06) dated 13.04.2023 issued under the signature of the Inspector of Schools, Board of Intermediate and Secondary Education, Dinajpur (respondent No. 4) approving the managing committee of the Hariharpur High School, Chirirbandar, Dinajpur (Annexure-E) is hereby also declared to have been issued without lawful authority and is of no legal effect and thus both the memos are hereby setaside.

Communicate the order.

K M Zahid Sarwar, J.

I agree.