

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

WRIT PETITION NO.7357 of 2023

And

WRIT PETITION NO.7491 of 2023

IN THE MATTER OF:

Applications under Article 102 of the
Constitution of the People's Republic of
Bangladesh

And

IN THE MATTER OF:

Md. Abu Sayeed Miah and others

....Petitioners in writ petition No.7357 of 2023

Sunil Krishna Halder and others

... Petitioners in writ petition No.7491 of 2023

-VS-

***Bangladesh Election Commission, represented
by the Chief Election Commissioner and others***

....Respondents in both writ petitions.

And

Mr. Yousuf Hossain Humayun, Senior Advocate with

Mr. M.K. Rahman, Senior Advocate with

Mr. M. Sayed Ahmed, Senior Advocate with

Mr. Mustafizur Rahman Khan, Advocate with

Mr. Nazmul Hossain Rakib, Advocate with

Ms. Sumaiya Ifrit Binte Ahmed, and

Mr. Zillur Rahman, Advocate

..... For the Petitioners in both writ petitions.

Mr. Md. Kamal Hossain Meahzi, Advocate

.... For the Respondent Nos.1 and 2 in both writ petitions.

Mr. Murad Reza, Senior Advocate with

Mr. Md. Hasan Abdul Quium, Advocate

..... For the added respondent No.4.

Mr. A.F. Hassan Ariff, Senior Advocate

..... *Amicus curie.*

Mr. Samarendra Nath Biswas, D.A.G. with

Mr. Md. Abul Kalam Khan (Daud), A.A.G. with

Mr. Md. Modersher Ali Khan (Dipu), A.A.G. and

Mr. Md. Taufiq Sajawar (Partho), A.A.G.

..For the Respondents-government in both writ petitions.

Heard on: 16.08.2023, 17.08.2023, 30.08.2023

And Judgment on:03.09.2023

Present:
Mrs. Justice Farah Mahbub.
And
Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

Since common question of law and facts are involved in both these 2(two) writ petitions as such, those have been heard together and are being disposed of by this single judgment.

Challenging transposition of Indurkani Upazilla to constituency Pirojpur-1 and Nesarabad Upazilla to Pirojpur-2 by the Election Commission, the respondent No.1 while publishing the final list of the respective territorial constituencies under Section 6(4) of the “জাতীয় সংসদের নির্বাচনি এলাকার সীমানা নির্ধারণ আইন, ২০২১” on 01.06.2023 (Annexure-A) the petitioners as being the voters of the respective constituencies filed the instant writ petitions mainly on the contention that preliminary list so had been published by the Election Commission in official gazette on 26.02.2023 (Annexure-D) under Section 6(3) of the said Act, 2021 after re-determination of the territorial constituency “..... প্রত্যেক নির্বাচনি এলাকার সীমানা পুনঃ নির্ধারণ করিয়া” does not contain creation of a new administrative area (নতুন প্রশাসনিক এলাকা) or extension (সম্প্রসারণ) or repeal thereof (বিলুপ্ত হয়েছে). Consequently, the voters of the respective areas have been deprived to place their respective objections effectively. As such, transposition of the respective areas of the respective constituencies by the Election Commission while publishing the final list of the territorial constituencies under Section 6(4) of the Act, 2021 is an act/ order passed without lawful authority and hence, have no legal effect; whereupon instant Rules Nisi were issued by this Court.

Article 65(1) of the Constitution of the People's Republic of Bangladesh (in short, the Constitution) provides for establishment of Parliament "Jatiya Sangshad" vested with the legislative power of the Republic. Article 65(2) provides that Parliament shall consist of a number of members to be elected in accordance with law from single territorial constituencies by direct election.

Amongst the respective functions of the Election Commission, established under Article 118 of the Constitution, vide Article 119(1)(c) of the said Constitution, the Commission is also required to delimit the constituencies for the purpose of election to Parliament in accordance with the Constitution and any other law passed by the Parliament in this regard. However, vide Article 124 subject to the provisions of the Constitution the Parliament is empowered to promulgate law in connection with matters of election to Parliament including delimitation of constituencies.

In order to provide for the delimitation of constituencies for the election to Parliament at first Ordinance No.XV of 1976 was promulgated under the name and style "*Delimitation of Constituencies Ordinance, 1976*". Said Ordinance was subsequently repealed with the promulgation of "জাতীয় সংসদের নির্বাচনি এলাকার সীমানা নির্ধারণ আইন, ২০২১" (Act No.14 of 2021) (in short, Act, 2021).

However, in order to fulfil the object of the Constitution and Act No.14 of the 2021 Section 6(1) of the Act, 2021 empowers the Election Commission to divide the whole country into as many single territorial constituencies as the number of members to be elected under Article 65(2) of the Constitution has been prescribed for the purpose of election to the seats in Parliament. Vide Section 6(2) of the said Act every constituency

shall be delimited by the Commission keeping in view of the administrative convenience, so that each constituency reflects compact area; also, due consideration shall be made, as far as practicable, to the distribution of population as given in the last census report.

Section 6(3) empowers the Commission to publish in the official gazette a preliminary list of territorial constituencies after making such enquires and examining such records, if deems necessary, specifying the respective areas proposed to be included in the respective constituency with notice inviting objections and suggestions, within the prescribed period, as has been specified therein.

Vide Section 6(4) the Commission shall, after hearing the objection and opinion, if there be any, received by it and on consideration of the context “ক্ষত্রমত”, if deems necessary, make such amendment in the preliminary list published under Section 6(3) and also, after making necessary correction of any unintentional mistake or omission publish in the official gazette the final list of the respective territorial constituencies specifying the respective areas included in each of such constituency.

Section 6 is accordingly quoted as under for ready reference:

“৬। **আঞ্চলিক নির্বাচনি এলাকার সীমানা নির্ধারণ, ইত্যাদি।** - (১) সংবিধান ও এই আইনের উদ্দেশ্যে পূরণকল্পে, কমিশন, সংবিধানের ৬৫(২) অনুচ্ছেদে উল্লিখিত সংখ্যক সংসদ-সদস্য প্রত্যক্ষ নির্বাচনের মাধ্যমে নির্বাচিত করিবার লক্ষ্যে সমগ্র দেশকে উক্ত সংখ্যক একক আঞ্চলিক নির্বাচনি এলাকায় বিভক্ত করিবে।

(২) উপ-ধারা (১) এর উদ্দেশ্যে পূরণকল্পে, কমিশন প্রশাসনিক সুবিধা বিবেচনা করিয়া প্রতিটি আঞ্চলিক নির্বাচনি এলাকার সীমানা নির্ধারণ করিবে, যাহাতে প্রতিটি আঞ্চলিক নির্বাচনি এলাকার ভৌগোলিক অখণ্ডতা বজায় থাকে, এবং এইরূপ সীমানা নির্ধারণ সর্বশেষে আদমশুমারি প্রতিবেদনে উল্লিখিত জনসংখ্যার, যতদূর সম্ভব, বাস্তব বন্টনের ভিত্তিতে করিতে হইবে।

(৩) কমিশন, প্রয়োজন মনে করিলে যথাযথ অনুসন্ধান এবং দলিলাদি পরীক্ষা করিয়া, প্রতিটি আঞ্চলিক নির্বাচনি এলাকার জন্য প্রস্তাবিত এলাকা উল্লেখপূর্বক, আঞ্চলিক নির্বাচনি এলাকাসমূহের একটি প্রাথমিক তালিকা প্রস্তুত করিয়া, সরকারি গেজেটে বিজ্ঞপ্তি প্রকাশ করিবে এবং উক্ত বিজ্ঞপ্তিতে উল্লিখিত সময়ের মধ্যে উহার উপর লিখিত আপত্তি এবং পরামর্শ আহ্বান করিবে।

[Emphasis given]

(৪) কমিশন, তদ্বর্ক প্রাপ্ত আপত্তি এবং পরামর্শ, যদি থাকে, শুনানি গ্রহণ করিয়া এবং ক্ষেত্রমত, বিবেচনা করিয়া উপযুক্ত মনে করিবেন উপ-ধারা (৩) এর অধীন প্রকাশিত প্রাথমিক তালিকায় প্রয়োজনীয় সংশোধন করিয়া, এবং অনিচ্ছাকৃত কোন ভুল বা বিচ্যুতি থাকিলে উহা সংশোধন করিয়া প্রত্যেক আঞ্চলিক নির্বাচনি এলাকার সীমানা উল্লেখপূর্বক সকল আঞ্চলিক নির্বাচনি এলাকার একটি চূড়ান্ত তালিকা সরকারি গেজেটে প্রকাশ করিবো।”

[Emphasis given]

From a combined reading of Section 6(2), (3) and (4) it is apparent that the Election Commission shall publish a preliminary list containing the proposed area(s) to be included in the respective constituencies with option to raise objection or to place opinion. Considering the objections and suggestions, if any, so have been received by it and also, keeping in view of the administrative convenience that each constituency is a compact area and having regard to the distribution of population as reflected in the last census report the Commission shall publish in the official gazette the final list of territorial constituencies showing the respective areas included in each of such constituency upon making necessary amendment in the preliminary list, if it deems fit.

However, vide Section 8(1), subject to sub-section (2) the Commission is empowered to delimit afresh the territorial constituencies upon completion of each census for the purpose of election to Parliament to be held following such census. However, for any other reason which the Commission considers it proper /fit “উপযুক্ত” entitles it to make fresh delimitation of the territorial constituencies before each election to Parliament. If, however, for the acts of God or for any other reasonable reason whatsoever the Commission fails to delimit territorial constituencies afresh under sub-section (1) and prior thereto necessity for holding parliamentary election crops up, said general election shall be

held on the basis of the last prescribed delimitation area of the respective territorial constituencies, as has been provided under Section 8(2).

Vide sub-section (3) of Section 8 while publication of the list of territorial constituencies in gazette under sub-section (1) upon retaining its geographical uniformity and area intact the Commission is required to endorse only the administrative charge, if there be any.

In other words, before each general election to Parliament the Election Commission is required to publish the list of the respective territorial constituencies specifying the areas included in each of such constituency including the amended one.

Section 8 is reproduced below for cursory glance:

“৮। নূতন করিয়া আঞ্চলিক নির্বাচনি এলাকার সীমানা নির্ধারণ (১) উপ-ধারা (২) এর বিধান সাপেক্ষে, নিম্নবর্ণিত কোনো কারণে কমিশন নূতন করিয়া আঞ্চলিক নির্বাচনি এলাকার সীমানা নির্ধারণ করিতে পারিবে, যথা:-

(ক) প্রত্যেক আদমশুমারি সমাপ্তির পর, আদমশুমারির পরবর্তী জাতীয় সংসদের সাধারণ নির্বাচনের উদ্দেশ্যে;

(খ) কমিশনের নিকট অন্য কোনো কারণ উপযুক্ত বিবেচিত হইলে উহা লিপিবদ্ধ করিয়া জাতীয় সংসদের প্রত্যেক সাধারণ নির্বাচন অনুষ্ঠানের পূর্বে

(২) দৈব-দুর্বিপাক বা অন্য কোনো যুক্তিসঙ্গত কারণে উপ-ধারা (১) এর অধীন নির্ধারিত সময়ের মধ্যে কোনো আঞ্চলিক নির্বাচনি এলাকার সীমানা নির্ধারণ করা সম্ভব না হইলে এবং উক্তরূপ কার্যসম্পন্ন হইবার পূর্বে কোনো সাধারণ নির্বাচন অনুষ্ঠানের প্রয়োজন হইলে উক্ত সাধারণ নির্বাচন আঞ্চলিক নির্বাচনি এলাকার সর্বশেষ নির্ধারিত সীমানার ভিত্তিতে অনুষ্ঠিত হইবে।

(৩) কমিশন, উপ-ধারা (১) এর অধীন উল্লিখিত নির্বাচন অনুষ্ঠানের ক্ষেত্রে, আঞ্চলিক নির্বাচনি এলাকাসমূহের আয়তন, অবস্থান, ইত্যাদি হুবহু ঠিক রাখিয়া কেবল প্রশাসনিক পরিবর্তনসমূহ, যদি থাকে অর্ন্তভুক্ত করিয়া আঞ্চলিক নির্বাচনি এলাকাসমূহের তালিকা সরকারি গেজেটে প্রকাশ করিবে।”

In the given context, Mr. Yousuf Hossain Humayun, the learned Senior Advocate appearing with Mr. M. K. Rahman, the learned Senior Advocate along with Mr. M. Sayed Ahmed, the learned Senior Advocate with Mr. Mustafizur Rahman Khan, the learned Advocate for the petitioners in both the writ petitions submits that the preliminary notification dated 26.02.2023 (Annexure-D) published by the

Commission under Section 6(3) of the Act does not propose the changes so have been brought about subsequently while publishing the final list dated 01.06.2023 (Annexure-A) under Section 6(4) in connection with constituency Nos.127 Pirojpur-1 and 128 Prirojpur-2 by omitting Nesarabad Upazilla from the territorial limits of the former and including it in the latter and by omitting Indurkani Upazilla from the territorial limits of the latter and including it in the former. Consequently, he goes to submit that the local inhabitants never had a proper opportunity, within the meaning and intendment of the law, to register objection on any such change before the Election Commission. He further goes to contend that said notification dated 26.02.2023 published under Section 6(3) of the Act was defective, for, though it states to have predetermined the territorial limits of the listed constituencies but, in fact, no change was proposed either of any administrative area or extension or repeal thereof in respect to Constitution No.127 Pirojpur-1 and 128 Pirojpur-2 respectively. In other words, he goes to argue that it does not reflect any administrative change whatsoever in view of Section 8(3) of the Act.

Accordingly, he submits that the impugned notification dated 01.06.2023 (Annexure-A) publishing the final list with change of areas in the respective territorial constituencies bearing No.127 and 128 is liable to be declared to have been passed without lawful authority and hence, of no legal effect.

Per contra, Mr. Md. Kamal Hossain Meahzi, the learned Advocate appearing for the respondent No.1 by filing affidavit-in-opposition and supplementary affidavit to the affidavit-in-opposition submits that Section 6(3) of the Ain of 2021 requires publication of a preliminary list with proposed areas of the respective constituencies. It does not mandatorily

require the Election Commission to publish the preliminary list with the proposal of changes in the respective constituencies. He further submits that as per requirement of Section 6(3) upon publication of the preliminary list with the proposed areas of the respective constituencies dated 26.02.2023 the Commission invited claims/objections/opinions from the residents of the concerned constituencies. In response thereof the residents of the said constituencies including the petitioner No.1 of writ petition No.7357 of 2023 submitted their proposals in writing supporting /opposing the said preliminary list. On receipt thereof the Commission provided opportunities to the respective residents to place their objections/ opinions, as the case may be, on the date so was fixed for public hearing. Upon hearing those residents and also, considering the territorial uniformity, administrative conveniences and distribution of population the Commission ultimately published the final notification in exercise of power as conferred under Section 6(4) of the Act, 2021 interposing the respective areas in the respective territorial constituencies.

He also submits that the instant writ petition is devoid of any substance in view of the facts that the Election Commission committed no illegality in delimiting the constituencies in question, while discharging its constitutional as well as statutory functions as provided under Article 119(1)(c) of the Constitution read with Section 6 of the Act, 2021.

In support of the contentions of the respondent No.1 Mr. Murad Reza, the learned Senior Advocate appearing with Mr. Md. Hasan Abdul Quium, the learned Advocate on behalf of the added respondent No.4 by filing a separate set of affidavit-in-opposition submits that the respondent No.1 published a preliminary list vide gazette notification dated 26.02.2023 under Section 6(3) of the Act, 2021 inviting the inhabitants of the

respective areas to place written demands/objections/suggestions and opinions. However, vide notification dated 05.04.2023 the respondent No.1 fixed respective dates for public hearing of those inhabitants who filed objections/made recommendations on the said preliminary list. The added respondent No.4, however, attended and expressed his opinion for including Nesarabad Upazila under the territorial constituency of Pirojpur-2. Ultimately, upon hearing the petitioners and others including this respondent the Election Commission vide the impugned notification dated 01.06.2023 had finally published the list of the respective areas included in the respective territorial constituencies.

In this regard drawing attention to Annexure- 2 of the affidavit in opposition filed by the respondent No.1 he also submits that the petitioners supporting the preliminary list published on 26.02.2023 made a proposal requesting the Election Commission not to delimit the constituency of Pirojpur-2. On the other hand, the majority of the applicants including the respondent No.4 being the voters of the concerned constituency proposed for delimitation of the constituencies on the grounds, amongst others, that if the delimitation was done according to their proposal, it would bring equality in distribution of voters/populations of the respective constituencies. Upon hearing the parties in support of their respective proposals, the Election Commission vide the impugned gazette notification dated 01.06.2023 had published the final list of the respective areas under Section 6(4) of the Act, 2021 which were included in the respective territorial constituencies. Thus, he submits, it is evident that prior to publication of the final list the petitioners including all the inhabitants of the respective areas were afforded a fair chance of hearing. Accordingly, he submits that the

contention of the petitioners of not being able to effectively place their objections, falls through.

However, so far the *locus standi* of the petitioners are concerned both the respondent No.1 and the added respondent No.4 conjointly argued that the petitioners are not aggrieved persons within the meaning of Article 102 of the Constitution. In this regard, it has been contended that admittedly, instant writ petition has not been filed in public interest, nor it has been filed to redress the grievances of any unprivileged/ less fortunate class for protection of their respective rights guaranteed by the Constitution. Rather, the petitioners are interlopers, set by the vested quarters to file the instant writ petition out of political motive.

Accordingly, the emphatic contention of the respondents concerned is that both the Rules being devoid of any substance are liable to be discharged.

Mr. A.F. Hassan Ariff, the learned senior Advocate, who appeared in this matter as an *amicus curie*, at the very outset drawing attention to Article 7(2) of the Constitution submits that our Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic. Article 65(1), he goes to submit, creates Parliament vested with the power to promulgate statute. At the same time, vide Article 65(2) the Constitution provides the number of the members of Parliament to be elected in accordance with law from single territorial constituencies by direct election. In this connection, referring to Article 119(1)(c) of the Constitution he goes to argue that amongst the respective functions, which the Election Commission has been bestowed upon to do, one of the important functions of the Election Commission is to delimit the constituencies for the purpose of general election. To that effect, the

Constitution vide Article 124 has empowered the Parliament to promulgate law including the matter of delimitation of constituency. Resultantly, Act No.14 of 2021 came into force prescribing the respective duties and functions of the Election Commission along with the respective procedures to be followed by it before each general election.

In this connection, placing Sections 6 and 8 of the Act, 2021 he goes to submit that prior to publication of the notification inviting objection/opinion from the inhabitants of the respective constituency on the areas proposed to be included in the respective territorial constituency the Election Commission itself has the power to enquire into, examine the relevant documents in order to make reasonable and practical proposal towards delimitation of the areas concern. In other words, he submits that the Legislature does not appear to have mandatorily required the Election Commission to incorporate proposed change of areas while publication of the preliminary list under Section 6(3). However, he submits, after hearing on the objections and opinion, if there be any and considering all relevant aspects in particular administrative convenience with regard to compact area as well as population the Commission finalizes its decision with amendment of the preliminary list, if so requires, by publication of the final list showing the areas included in the respective territorial constituencies.

In view of the respective provisions of the Constitution and the Act No.14 of 2021 and also, considering the submissions of the respective contending parties let us first have a look at the relevant part of the general notification dated 26.02.2023 published in gazette on 26.02.2023 (Annexure-D) by the Election Commission under Section 6(3) of the Act, 2021, which is a preliminary list containing the areas proposed to be

included in the respective 300 territorial constituencies of the country, keeping in view of the administrative convenience, geographical uniformity and population etc., which is quoted as under:

“বাংলাদেশ নির্বাচন কমিশন
নির্বাচন কমিশন সচিবালয়
নির্বাচন ভবন, আগারগাঁও, ঢাকা।

বিজ্ঞপ্তি

তারিখ: ২৬ ফেব্রুয়ারি, ২০২৩/১৩ ফাল্গুন, ১৪২৯

নং ১৭.০০.০০০০.০২৫.২২.০০৪.২২(অংশ)-১৫৬।- গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের অনুচ্ছেদ ১১৯ এর দফা (১) এর উপ-দফা (গ) এবং জাতীয় সংসদের নির্বাচনি এলাকার সীমানা নির্ধারণ আইন, ২০২১ এর ধারা ৮ এর উপ-ধারা (১) (খ) অনুযায়ী জাতীয় সংসদ সদস্যের নির্বাচন অনুষ্ঠানের লক্ষ্যে এলাকাভিত্তিক নির্বাচনি এলাকাসমূহের সীমানা উপরোক্ত আইনের ধারা ৬ এর উপ-ধারা (২) অনুসারে প্রশাসনিক সুবিধা আঞ্চলিক অখন্ডতা এবং জনসংখ্যার বাস্তব বিভাজনকে যতদূর সম্ভব বিবেচনায় রাখিয়া প্রত্যেক নির্বাচনি এলাকার সীমানা পুনঃনির্ধারণ করিয়া ধারা ৬ উপ-ধারা (৩) অনুযায়ী নির্বাচন কমিশন এতদসঙ্গে একটি প্রাথমিক তালিকা প্রকাশ করিতেছে এবং তালিকাটি সম্পর্কে সংশ্লিষ্ট নির্বাচনি এলাকার বাসিন্দাদের নিকট হইতে লিখিত দাবী/আপত্তি/সুপারিশ/মতামত আহ্বান করিতেছে।

০২। সীমানা পুনঃনির্ধারণে নিম্নোক্ত পদ্ধতি অনুসরণ করা হইয়াছে।

- (ক) প্রতিটি জেলার ২০১৮ সালে নির্ধারিত মোট আসন সংখ্যা অপরিবর্তিত রাখা;
- (খ) প্রশাসনিক ইউনিট বিশেষ করিয়া উপজেলা এবং সিটি কর্পোরেশন ওয়ার্ডের যথাসম্ভব অখন্ডতা বজায় রাখা।
- (গ) ইউনিয়ন পরিষদ বা পৌর এলাকার ওয়ার্ড একাধিক সংসদীয় আসনে বিভাজন না করা;
- (ঘ) যে সকল নতুন প্রশাসনিক এলাকা সৃষ্টি হয়েছে বা সম্প্রসারণ হয়েছে বা বিলুপ্ত হয়েছে তা অন্তর্ভুক্ত করা; এবং
- (ঙ) ভৌগলিক বৈশিষ্ট্য ও যোগাযোগ ব্যবস্থা যথাযথ বিবেচনায় রাখা।

(৩) কোন সংক্ষুব্ধ বা স্বার্থ সংশ্লিষ্ট ব্যক্তি আগামী ১৯ মার্চ, ২০২৩/০৫ চৈত্র, ১৪২৯ তারিখের মধ্যে কোন আসনের পুনঃনির্ধারিত নির্বাচনি এলাকার বিষয়ে নির্বাচন কমিশন বরাবর তাঁহার লিখিত দাবী/আপত্তি/সুপারিশ/মতামত পেশ করিত পারিবেন। তবে দাবী/আপত্তি/সুপারিশ/মতামত এই বিজ্ঞপ্তিতে উল্লিখিত কোন আসনের সীমানা সংক্রান্ত হইতে হইবে এবং দাবী/আপত্তি/সুপারিশ/মতামত সংক্রান্ত দরখাস্ত ৫(পাঁচ) প্রস্থ দাখিল করিতে হইবে। নির্ধারিত তারিখের পর কোন দাবী/আপত্তি/সুপারিশ/মতামত সংক্রান্ত দরখাস্ত গ্রহণ করা হইবে না।

০৪। নির্বাচন কমিশন সকল দাবী/আপত্তি/সুপারিশ/মতামত প্রকাশ্য শুনানীর মাধ্যমে নিষ্পত্তি করিবে। শুনানীর বিস্তারিত কর্মসূচি বিজ্ঞপ্তির মাধ্যমে যথা সময় জানানো হইবে।

নির্বাচন কমিশনের আদেশক্রমে
মোঃ জাহাংগীর আলম
সচিব।”

১২৭ পিরোজপুর-১	(ক) পিরোজপুর সদর উপজেলা (খ) নাজিরপুর উপজেলা এবং (গ) নেছারাবাদ উপজেলা
১২৮ পিরোজপুর-২	(ক) কাউখালী উপজেলা (খ) ভান্ডারিয়া উপজেলা এবং (গ) ইন্দুরকানী উপজেলা

As has been observed earlier, vide Section 8(1) subject to sub-section (2) before every general election, Election Commission is required to publish the list of areas included in the respective territorial constituencies following the procedures as provided under Section 6 in particular keeping in view of the geographical uniformity and population of the said constituency. However, prior thereto the Legislator has made it incumbent upon the Election Commission under Section 6(3) to publish a list of the areas proposed to be included in the respective territorial constituencies with notice upon the inhabitants of the respective constituencies to raise/place written objection/recommendation/opinion, if there be any. In compliance thereof respondent No.1 has published the general notification dated 26.02.2023 (Annexure-D). Admittedly, said list contains the respective areas proposed to be included in the respective constituencies. However, so far constituency Nos.127 Pirojpur-1 and 128 Pirojpur-2 are concerned the Election Commission has mentioned the names of the respective areas as were retained earlier by it while publishing the final list under Section 6(4) dated 30.04.2018 for the general election, 2018.

In this regard, the emphatic contention of the petitioners is that while publishing preliminary list under Section 6(3) the Election Commission is required to endorse the proposed “*change*” of the respective areas; otherwise the local inhabitants will not have proper and effective opportunity to place their respective objections on such change of areas; hence, goes to defeat their fundamental rights as guaranteed under Articles 27 and 31 of the Constitution.

Said contention of the petitioners is a misconceived one, for, nowhere within the four corners of Section 6(3), the Legislature has

bound the Election Commission to endorse the “*proposed change of areas*” while inviting the inhabitants of the respective constituency to raise objection or place their opinion in support thereof. The requirement of law under Section 6(3) is to endorse “*proposed area*” to be included in the respective territorial constituency. Moreso, with the use of the words “কমিশন, তদ্বর্ক প্রাপ্ত আপত্তি এবং পরামর্শ, যদি থাকে, শুনানি গ্রহণ করিয়া এবং ক্ষেত্রমত, বিবেচনা করিয়া উপযুক্ত মনে করিলে উপ-ধারা (৩) এর অধীন প্রকাশিত প্রাথমিক তালিকায় প্রয়োজনীয় সংশোধন করিয়া,” in Section 6(4), the intention of the Legislature becomes abundantly clear that change of area, if so requires, is to be endorsed by the Election Commission only after hearing the objection/receiving opinion and considering other required documents on administrative convenience, upon making necessary amendment of the preliminary list published under Section 6(3) of the Act, 2021.

In the instant case, as it appears from records as annexed in the affidavit-in-opposition filed by respondent No.1 that the Election Commission while publishing preliminary list on 26.02.2023 (Annexure-D) under Section 6(3) duly endorsed/incorporated the respective areas to be included in the respective constituencies with invitation to the inhabitants of the respective territorial constituencies to submit written objection/demand/recommendation/opinion on the said list. Accordingly, the Commission vide notification dated 05.04.2023 fixed respective dates for public hearing of the respective constituencies including Constituency Nos. 127 Pirojpur-1 and 128 Pirojpur-2 (Annexure-1A of the said affidavit-in-opposition filed by the respondent No.1). In response thereof 24 inhabitants/voters of the respective constituencies including petitioner No.1 of writ petition No.7357 of 2023 submitted objections/opinions/recommendations before the respondent No. 1 in support of / against the

preliminary list dated 26.02.2023 (Annexure-2 of the Affidavit-in-opposition). However, on perusal of the said list it appears that objection/opinions have been placed by the inhabitants concerned primarily taking into consideration of population of the respective areas. The Commission upon hearing the said inhabitants concern took decision on 14.05.2023(Annexure-3) to interpose the respective areas of the territorial constituencies in question.

Relevant part of the said decision dated 14.05.2023 is quoted as under:

“৪.৫ সিদ্ধান্ত.

সংসদীয় আসন ১২৭ পিরোজপুর-১, ১২৮ পিরোজপুর-২ ও ১২৯ পিরোজপুর-৩ :

১২৭ পিরোজপুর-১, ১২৮ পিরোজপুর-২ ও ১২৯ পিরোজপুর-৩ সংসদীয় আসনের সীমানার বিষয়ে উপস্থিত পক্ষ-বিপক্ষের আবেদনকারীগণের শুনানী গ্রহণ, ইতোপূর্বে দাখিলকৃত আবেদন/আপত্তি পর্যালোচনা, বিভিন্ন তথ্য-উপাত্ত বিশ্লেষণ, ভৌগলিক এলাকার নৈকট্য, প্রশাসনিক ইউনিটের অখন্ডতা, প্রশাসনিক সুবিধা বিশ্লেষণ করা হয়। একই সাথে ভোটার সংখ্যার সাম্যতা, নদী বেষ্টিত এলাকার ব্যাপ্তি বিস্তৃতি এবং সীমানার মানচিত্র পরীক্ষা করা হয়। ভৌগলিক নৈকট্য, প্রশাসনিক সুবিধাদি এবং ভোটার সংখ্যার অধিকতর সাম্যতা বিবেচনায় গত ২৬ ফেব্রুয়ারি, ২০২৩ তারিখে ১৭.০০.০০০০.০২৫.২২.০০৪.২২ (অংশ)- ১৫৬ নম্বর গেজেট বিজ্ঞপ্তিতে জাতীয় সংসদের নির্বাচনী এলাকার সীমানার প্রাথমিক তালিকায় প্রকাশিত ১২৭ পিরোজপুর-১, ১২৮ পিরোজপুর-২ এর সীমানা পুনঃগঠন করে ১২৭ পিরোজপুর-১ এ নাজিরপুর, সদর ও ইন্দুরকানি উপজেলা এবং ১২৮ পিরোজপুর-২ এ নেছারাবাদ, কাউখালী ও ভান্ডারিয়া উপজেলা সমন্বয়ে জাতীয় সংসদের সীমানা চূড়ান্ত করে গেজেট বিজ্ঞপ্তি প্রকাশ করা হোক।”

In view of the above position of law and considering the facts and circumstances of the instant case, we have no manner of doubt to find that publishing the final list by the respondent No.1 under Section 6(4) of the Act, 2021 on 01.06.2023 (Annexure-A) transposing 2 (two) upazillas of the concerned territorial constituencies considering the objections/opinions/recommendations and mainly keeping in view of the geographical uniformity and population of those 2(two) areas, does not suffer from any illegality requiring interference by this Court under Article 102 of the Constitution.

However, the *locus standi* of the petitioners of both the writ petitions has been assailed by the respondents on the claim that they were

afforded a fair chance of hearing before publication of the final gazette notification dated 01.06.2023 and that they being interlopers set by the vested quarters out of political motive hence, their contentions cannot be entertained in the eye of law.

The cardinal issue being raised by the petitioners, as being the voters of Constituency Nos. 127 Pirojpur-1 and 128 of Pirojpur-2, is whether the Election Commission while publishing the preliminary list under Section 6(3) of the Act is required to incorporate the proposed change of areas in the respective territorial constituencies for raising effective objection or giving opinion thereto.

Said issue having involved question of interpretation in the light of the Constitution and the Act No. 14 of 2021 hence, the petitioners, except petitioner No.1 of writ petition No. 7357 of 2023 who has duly raised objection in writing in response to the preliminary list published by the respondent No.1 under Section 6(3) of the Act, 2021, have *locus standi* to challenge the impugned notification dated 01.06.2023 published by the Election Commission under Section 6(4) of the said Act.

In the result, both the Rules are discharged without any order as to costs.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.