

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

WRIT PETITION NO.10083 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:

Al-Islam Trust Sribordi

... Petitioner.

-vs-

*Bangladesh represented by the Secretary,
Secondary and Higher Education, Bangladesh
and others.*

... Respondents.

And

Mr. Tawhidul Islam, Advocate

.... For the petitioner.

Mr. A.S.M. M. Kabir Khan, Advocate

..... for the respondent No.7

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. with

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

....For the Respondents-government.

***Heard on:22.11.2023, 30.11.2023,
06.12.2023 and judgment on:23.01.2024***

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

This Rule Nisi was issued under Article 102 of the Constitution of the
People's Republic of Bangladesh, calling upon the respondents to show cause
as to why the impugned approval of the Managing Committee of Tatihati

Ideal School dated 17.04.2023 for the tenure of 2 (two) years under Nothi No.বিদ্যালয়শাখা/Sherpur/113948/2300388 dated 17.04.2023 issued under the signature of the respondent No.6 under “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, ঢাকা (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠানের গভর্নিংবডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯” (Annexure-G), should not be declared to have been passed without lawful authority and hence, of no legal effect.

At the time of issuance of the Rule, the operation of the impugned order dated 17.04.2023 passed under Nothi No.বিদ্যালয়শাখা/ Sherpur/ 113948/ 2300388 under the signature of the respondent No.6 was stayed by this Court for a prescribed period.

Facts, in brief, are that the petitioner, Al-Islam Trust Sribordi represented by its Chairman is registered under the Societies Registration Act, 1860 (in short, the Act, 1860) bearing registration No.S-1571(131)/93, dated 05.09.1993 (Annexure-A). In this regard it has been stated that Professor Md. Mazharul Islam, son of late Munshi Mofizuddin and Alecha Begum along with others had founded Al-Islam Trust Sribordi (in short, the Society) with a view to develop the education sector in the concerned locality and to that effect had transferred a land upon executing a registered deed dated 18.06.1997. However, said Md. Mazharul Islam was the founding Chairman of the said Society. Later, due to old age he resigned from his respective post voluntarily on 07.01.2023. Accordingly, his younger brother namely, Md. A. Y. M. Aminul Islam who is the founding Joint Secretary of the Society became its Chairman with the approval of other members taken in the 30th general meeting dated 07.01.2023 (Annexure-B).

Subsequently, the newly elected members of the said society adopted the following resolution in the meeting held on 28.02.2023 (Annexure-C).

“বেসরকারি শিক্ষা প্রতিষ্ঠান পরিচালনা সংক্রান্ত মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, ময়মনসিংহ এর এস আর ও নং- আই/২০০৯ তারিখ ০৮/০৬/২০০৯ প্রবিধান মামলার ৪৯ নং ধারা অনুযায়ী আগামী দুই বছর এর জন্য তাতিহাটি আইডিয়াল স্কুল এর ম্যানেজিং কমিটি গঠনের সিদ্ধান্ত হয় যে, ট্রাস্ট এর চেয়ারম্যান এ ওয়াই এম আমিনুল ইসলাম সংস্থার প্রধান হিসাব ম্যানেজিং কমিটির সভাপতি থাকবেন এবং উক্ত প্রজ্ঞাপন অনুযায়ী প্রবিধানমালার ৪৯ নং ধারা অনুযায়ী কমিটি গঠনের জন্য প্রয়োজনীয় পদক্ষেপ গ্রহণ করবেন।”

Accordingly, respective copies of the resolution of the said Society dated 28.02.2023 and 05.03.2023 respectively were duly forwarded to the respondent No.7, the Headmaster, Tatihati Ideal School, Sreebardi, Sherpur vide office letter dated 05.03.2023 with request to take necessary steps to that effect (Annexure-D-D-1 respectively).

In response thereof the respondent No.7 vide letter dated 08.03.2023 made a request to supply the following papers for approval of the new committee i.e.

- ১। জয়েন্টস্টক কোম্পানি কর্তৃক ট্রাস্ট এর নতুন কমিটি অনুমোদনের ফটোকপি।
- ২। ট্রাস্ট এর যে বৈঠক নতুন কমিটি গঠন করা হয়েছে সেই বৈঠক এর রেসুলেশন এর ফটোকপি।”

In the meanwhile, on 23.03.2023 the petitioner duly submitted all supporting documents i.e. the list of the newly elected members of the Society to the Registrar of Joint Stock of Companies with required fees (Annexure-F1), which was duly acknowledged by the said authority (Annexure-F). Accordingly, the petitioner had requested the respondent No.7 to take necessary steps towards formation of the Managing Committee of the school in question in due compliance of law. Said

respondent instead of taking steps to that effect sent a list to the Board of Intermediate and Secondary Education, Mymensingh showing one Abdul Momeen, as the Chairman of the Society and obtaining his nomination referred the name of one Abdur Rahman, Superintendent, Bagervita Islamia Dakhil Madrasah, Jhenaigati, Sherpur as the President of the Managing Committee. Basing on the said list, the Board ultimately, gave approval to the said Committee on 17.04.2023 (Anneuxre-G) under Regulation 49(1) of the “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, ঢাকা (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠানের গভার্ণিংবডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯” (in short, the Regulations, 2009), for 2(two) years with effect from 17.04.2023.

With a prayer to form a proper committee under Regulation 49 upon cancelling the impugned order of giving approval of the Managing Committee in question the petitioner made a representation to the respondent concerned on 06.07.2023 (Annexure-I), but with no response; hence, the application.

In addition to the Governing Body constituted under Regulation 4 and Managing Committee constituted under Regulation 7, “মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, ঢাকা (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠানের গভার্ণিংবডি ও ম্যানেজিং কমিটি) প্রবিধানমালা, ২০০৯” has introduced 4(four) other types of committees as enshrined in Regulations 48, 49, 50 and 51. One of such committee is “সংস্থা পরিচালিত শিক্ষা প্রতিষ্ঠানের গভার্ণিংবডি বা ম্যানেজিং কমিটি”. However, the manner of constitution/composition of the said committee has been provided in Regulation 49, which runs as under:

“৪৯। সংস্থা পরিচালিত শিক্ষা প্রতিষ্ঠানের গভার্ণিং বডি বা ম্যানেজিং কমিটি.

(১) ট্রাস্ট, মিশনারী, শিক্ষাসমাজ, সেনানিবাস, পৌরসভা, সিটি কর্পোরেশন, রেলওয়ে, বিশ্ববিদ্যালয়, বোর্ড বা এইরূপ অন্য কোন সংস্থা বা প্রতিষ্ঠান কর্তৃক প্রতিষ্ঠিত ও পরিচালিত শিক্ষা প্রতিষ্ঠান পরিচালনার জন্য নিম্নোক্তরূপে গভার্ণিং বডি বা ক্ষেত্রমত, ম্যানেজিং কমিটি গঠন করা যাইতে পারে, যথা:

(ক) সভাপতি: সংস্থার প্রধান বা তদকর্তৃক মনোনীত ব্যক্তি;

(খ) সদস্য-সচিব: শিক্ষা প্রতিষ্ঠানের প্রধান (পদাধিকার বলে);

(গ) সদস্য-

(অ) শিক্ষক-শিক্ষিকাদের মধ্য হইতে তাঁহাদের ভোটে নির্বাচিত কিংবা তাঁহাদের মধ্যে সমঝোতার মাধ্যমে সংস্থা প্রধান কর্তৃক মনোনীত দুইজন সদস্য;

(আ) শিক্ষার্থীদের অভিভাবকগণের মধ্য হইতে সভাপতি কর্তৃক মনোনীত তিনজন সদস্য যাহাদের মধ্যে অন্ততঃ একজন মহিলা হইবেন।

(২) সংস্থা প্রধান কর্তৃক উপ-প্রবিধান (১) এর দফা (গ) এর উপ-দফা (অ) এর অধীন নির্বাচন অথবা সমঝোতার সিদ্ধান্ত গৃহীত হইবে।”

In view of the above, the Governing Body or the Managing Committee, as the case may be, shall be constituted with (a) the Chairman, who either is the head of the “সংস্থা” or organization which has established the educational institution or his nominated person; (b) the Member Secretary as being the Headmaster of the School or the Principal of the College; (c) 2(two) members being elected from amongst the teachers or being selected by the head of the organization “সংস্থা প্রধান” on amicable settlement; and (d) 3(three) members including 1(one) female member being selected by the Chairman of the said committee. It is, however, interesting to note that Regulation 49 does not make it incumbent or require to send the list of constitution/composition of the said committee to the Board for approval, as opposed to Regulation 29(2) and (3) of the Regulations, 2009.

Admittedly, Tatihati Ideal School has been established at the instance of Al-Islam Trust Sreibordi, founded by Professor Md. Mazharul Islam, one Alecha Begum and others, registered under the Societies Registration Act, 1860 with the Registrar of Joint Stock Companies bearing Registration No.S-1571(131)/93 dated 05.09.1993 (Annexures-A to A2 of the writ petition).

It, however, appears from Annexures-K-O of the supplementary affidavit to the writ petition that the Managing Committee of the said school has all along been duly formed and approved by the Board of Intermediate and Secondary Education, Mymensingh in compliance of Regulation 49 of the Regulations, 2009.

The cause of action arose when vide Nothi No.বিদ্যালয়শাখা/Sherpur/113948/2300388 dated 17.04.2023(Annexure-G to the writ petition) the School Inspector concerned pursuant to the order of the Chairman of the Board, respondent No.2 gave approval of the impugned Managing Committee in question under Regulation 49(1) for 2(two) years with effect from 17.04.2023.

At this juncture, Mr. Tawhidul Islam, the learned Advocate appearing for the petitioner submits that on the face of the said impugned order it is apparent that said approval has been given in flagrant violation of Regulation 49 basing on the list of the respective persons, being forwarded by the respondent No.7, the Headmaster of School without obtaining required prior approval of the petitioner, as is mandatorily required under the said provision of law. Hence, he submits that the impugned order dated 17.04.2023(Annexure-G) of giving approval to the

Managing Committee of the School is liable to be declared to have been passed without lawful authority and hence, of no legal effect.

Admitting the fact that the school was/is being run by the Managing Committee constituted at the instance of the petitioner Society under Regulation 49 Mr. A.S.M. M. Kabir Khan, the learned Advocate appearing on behalf of the respondent No.7 by filing affidavit-in-opposition submits that the petitioner sent a copy of the resolution of Al-Islam Trust, Sreebordi dated 28.02.2023 with forwarding letter dated 05.03.2023 requesting the said respondent to take necessary steps towards formation of the Managing Committee of School since the tenure of the earlier committee expired on 31.03.2023. In this regard, he goes to argue that since the petitioner is being regulated under the Societies Registration Act, 1860 and that in response to the office letter dated 08.03.2023 issued by this respondent the petitioner had failed to provide copy of the approval of the new executive committee by the Registrar of Joint Stock Companies and Firms; as such, giving approval of the present Managing Committee by the Board cannot be termed as an order passed without lawful authority. Accordingly, he submits that this Rule being devoid of any substance is liable to be discharged.

It is not disputed that the school was being run by the Managing Committee formed at the instance of the petitioner Society and approved by the Board. In this regard, the only assertion of the respondent No.7 is that the newly formed Executive Committee has not yet been approved by the Registrar of Joint Stock Company; hence, this Committee has no legal entity in the eye of law.

As has been observed earlier, the petitioner Society is registered under the Societies Registration Act, 1860; hence, respective provisions of the said Act of 1860 is applicable for the same.

Amongst others, Section 1 of the said Act, however, deals with the reformation of societies by Memorandum of Association; Section 2 deals with particulars to be mentioned in the Memorandum of Association; Section 3 requires registration of Societies; Section 3A provides for fees to be paid to the Registrar; Section 4 prescribes for filing list of the Managing Committee of the Society; Section 18, however, requires the Society to file Memorandum of the Society with the Registrar of Joint Stock Company; and vide Section 19 once those respective documents have been filed with the said authority those become public documents and are subject to public inspection subject to payment of required fees.

Relevant Sections are quoted below for cursory glance:

“1. Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-stock Companies form themselves into a society under this Act.

2. The memorandum of association shall contain the following things (that is to say)-

the name of the society:

the objects of the society:

the names, addresses, and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body shall be filed with the memorandum of association.

[3. Upon the filing of the memorandum and certified copy of the rules and regulations of the society under section 2, the registrar shall certify under his hand that the society is registered under this Act.

3A. There shall be paid to the registrar for registration of a society and for matters mentioned in the Schedule to this Act, fees specified in that Schedule or such smaller fees as the Government may direct.]

4. Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-stock Companies of the names, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society.

18. In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint-stock Companies a memorandum showing the name of the society, the objects of the society, and the names, addresses and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

[19. Any person may inspect all documents filed with the registrar under this Act, or require a copy or extract of a copy of any document to be certified by the registrar, on payment of the fee specified in the Schedule to this Act in this behalf or such smaller fee as the Government may direct.]”

From the above quoted provisions of law it is apparent that subsequent to submission of the list of the respective members of the new executive committee of the petitioner Society the Act of 1860 does not require the Registrar of the Joint Stock Companies to give approval thereof, as claimed by the respondent No.7.

In the given context, instead of forwarding the list of the new executive committee of the Society on the plea of not being approved by the Registrar of the Joint Stock Companies forwarding a different list without prior approval of the petitioner Society is unlawful. Accordingly, we have no manner of doubt to find that the impugned approval so has been given vide order dated 17.04.2023 under the signature of the

respondent No.6 on behalf of the respondent No.2 basing on the list provided by the respondent No.7 is in flagrant violation of Regulation 49; hence, it is liable to be knocked down.

In view of the above observations and findings, we find substance in the instant Rule.

In the result, the Rule is made absolute.

The impugned approval of the Managing Committee of Tatihati Ideal School dated 17.04.2023 for the tenure of 2(two) years under Nothi No. বিদ্যালয়শাখা/Sherpur/113948/2300388 dated 17.04.2023 issued under the signature of respondent No.6 under the Regulations, 2009 (Annexure-G), is hereby declared to have been passed without lawful authority and hence, of no legal effect.

The respondent No.7 is hereby directed to forward all relevant documents of the newly formed executive committee of the petitioner Society to the Board along with the list of the respective members including the Chairman of the Managing Committee in view of Regulation 49 within 4(four) weeks from the date of receipt of the copy of this judgment and order. On receipt thereof the Board shall pass necessary order on the formation of the new Managing Committee of the School under Regulation 49 in strict compliance of law.

In this regard, the petitioner Society is directed to cooperate and assist the respondent No.7 with regard to furnishing the respective documents with a view to pass necessary order by the Board under Regulation 49 of the Regulations, 2009.

There will be no order as to costs.

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

Muhammad Mahbub Ul Islam, J:

I agree.

Montu (B.O.)