

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

**Writ Petitions No. 421 of 2024**

**In the matter of:**

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

-And-

**In the matter of:**

Pervin Akhter and another

..... Petitioners

-Versus-

Government of the People's Republic of  
Bangladesh represented by its Secretary,  
Secondary and Higher Education Division,  
Ministry of Education and others.

..... Respondents

Mr. Shameem Sardar with  
Ms. Iffath Ara Khanam, Advocates

. . . . For the petitioners.

Mr. Mustafizur Rahman Khan, with  
Mr. Saidul Haque Sumon and  
Mr. Jahirul Islam, Advocates

. . . For the added respondents No.8-43

With

**Writ Petition No. 3903 of 2024.**

Md. Zia Mahiuddin and 119 others.

. . . . petitioners

-Versus-

Government of the People's Republic of  
Bangladesh represented by its Secretary,  
Secondary and Higher Education Division,  
Ministry of Education and others.

Mr. Mustafizur Rahman Khan, with  
Mr. Saidul Haque Sumon and  
Mr. Jahirul Islam, Advocates

..... For the petitioners.

Mr. Kazi Mynul Hassan, DAG with  
Ms. Farhana Parveen Bithi, AAG and  
Mr. Kalipada Mridha, AAG and  
Mr. Apurbo Kumar Biswas, AAG

. . . For the respondent No.1 in both the writ petitions.

Mr. Muhammad Rafiul Islam, Advocate

----- For the respondent No. 5 (VNSC) in both the writ petitions.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 12.05.2024, 13.05.2024, 15.05.2024, 19.05.2024 and Judgment on 21.05.2024.

**J. B. M. Hassan, J**

These 02(two) writ petitions involve similar questions of law and facts. Hence, they have been heard together and are being disposed of by this common judgment.

The petitioners, namely, Pervin Akhter and Shayma Goswami have filed writ petition No. 421 of 2024 challenging inaction of the respondents in taking action/ step regarding the applications dated 10.12.2023 and 17.01.2024 filed by the petitioners and seeking a direction upon the respondents to cancel admission of the disqualified students beyond age limit admitted to Class-I of the Viqarunnisa Noon School and College through admission result, 2024 (Annexures-D, D1, D2, D3, D4, D5, D6, D7, D8 and D9 to the writ petition) and also to fill up the vacant seats by the qualified students from the waiting list in pursuance of the circulars dated 17.10.2023 and 19.10.2023 (Annexures-B and C to the writ petition).

During pendency of the Rule Nisi the respondent No.2 i.e the Director General, Secondary and Higher Education Directorate, Dhaka (the

Directorate) issued an office order dated 22.02.2024 cancelling admission of 169 students. Challenging the said order 120 parents of those students filed writ petition No. 3903 of 2024 and obtained the Rule Nisi.

Facts involved in the writ petition No. 421 of 2024 precisely are that the respondent No.3 i.e the Director (Secondary) of the Directorate issued a general admission circular on 17.10.2023 for admitting students in different classes including Class-I for the sessions 2024 (01.01.2024 to 31.12.2024) in the Secondary Schools under Metropolitan, all Districts Sadar and Upzilas. Following the said circular, the Principal of the Viqarunnisa Noon School and College, Dhaka (the VNSC) published a notice on 19.10.2023 furnishing the information regarding vacant seats in the VNSC in different classes and also required age limit of the aspirant students, in particular, for Class-I the age limit was 01.01.2017 to 31.12.2017. In pursuance of the aforesaid circular, the petitioners' daughters along with others participated in the admission process through online platform. The admission process was conducted by the Director General of the Directorate (respondent No.2) through random selection (lottery) and the result was published on 28.11.2023. Pursuant to the final result prepared by the DG, the VNSC published the names of finally selected students on 02.12.2023 wherein the petitioners' daughters appeared in the 1<sup>st</sup> waiting list. On the very day, one member of the Governing Body of the VNSC filed an application to the Principal, VNSC pointing out that some students were admitted to Class-I beyond the age limit as required by the admission notice. Thereafter, the present petitioner No. 1 and another also filed an application on 10.12.2023

raising similar objection before the Secretary, Secondary and Higher Education Division, Ministry of Education, requesting to cancel the admission of the students of Class-I who got admission beyond the age limit. But there being no response, the petitioner No. 1 again filed a representation before the Director General on 17.01.2024 making similar prayer but to no effect. In the circumstances, these two petitioners filed writ petition No. 421 of 2024. After hearing the writ petition, this Court issued Rule Nisi on 23.01.2024 and also passed a direction upon the Director General to dispose of the representation of the petitioner No.1 dated 17.01.2024.

During pendency of the Rule, on behalf of the Director General (the DG) Mr. Kazi Mynul Hassan, learned Deputy Attorney General (DAG) filed an affidavit in compliance affirmed on 28.02.2024 annexing an office order dated 22.02.2024 stating that the DG cancelled the admission of 169 students of Class-I of the VNSC, finding their admission beyond the age limit and directed the VNSC (School) to do the needful in pursuance of the said order (Annexure-II to the affidavit-in compliance filed by the DG).

On perusal of the aforesaid affidavit-in-compliance, this Court by order dated 06.03.2024 directed the Director General and the VNSC (School) to fill up the vacant seats from the waiting list within 01 (one) week from date.

Challenging the said order dated 06.03.2024, the added respondents No. 8-43 filed Civil Petition for Leave to Appeal (CPLA) No. 881 of 2024 before the Appellate Division. Eventually, the CPLA was heard and disposed of by order dated 20.03.2024 directing the High Court Division to

hear and dispose of the Rule as expeditiously as possible, preferably within 02(two) months from date, without fail and also directing the parties to maintain status-quo in respect of admission of the students pursuant to order dated 06.03.2024 passed by the High Court Division in writ petition No. 421 of 2024.

Thereafter, 120 parents out of those 169 students also filed another writ petition being No. 3903 of 2024 challenging the office order dated 22.02.2024 passed by the Director General (DG) cancelling admission of their children from Class-I of the VNSC.

The Principal of the VNSC has filed an affidavit in opposition contending, *inter alia*, are that pursuant to a directive to determine the upper limit of students' age, the VNSC published the admission related notice on 19.10.2023 mentioning the age limit following the Admission Policy, 2024 and Education Policy 2010, in particular, for Class-I mentioning the age limit, 01.01.2017 to 31.12.2017. After completion of the lottery process the final result was prepared by the Directorate on 28.11.2023. When the result was sent to the VNSC, the Principal found that the students who were born in 2015 and 2016 had also been selected in the lottery for Class-1. It was clear violation of clause-3 of the "বেসরকারি স্কুল, স্কুল এন্ড কলেজ (মাধ্যমিক, নিম্ন মাধ্যমিক ও সংযুক্ত প্রাথমিক স্তর) শিক্ষার্থী ভর্তি নীতিমালা" dated 23.10.2023 (shortly, the Admission Nitimala, 2023).

In such circumstances, the matter was discussed with the higher authorities including the Directorate. Subsequently, after discussing with the Chairman of the Governing Body of the VNSC along with other concerned

persons, it was decided to complete the selection process by including birth years 2015 and 2016.

The DG conducted random selection method (lottery) centrally and published result sheets based on aforesaid notice as per the “শিক্ষার্থী ভর্তি নীতিমালা”. As such, the answering Principal respondent is under legal obligation to admit the students based on the result sheets of the Directorate. Despite, this respondent made application to the DG for clarification regarding admission of students born in 2015 and 2016.

The added respondents No.8-43 have also filed an affidavit in opposition denying the statements of the writ petition. Contentions of these respondents, *inter alia*, are that in Clause-3 of the Admission Nitimala, 2023 it has been incorporated that the age of students for admission to Class-1 has to be 6+ years as per National Education Policy, 2010. In the same Clause it has also been mentioned that the concerned school would determine the maximum age for admission. But the VNSC did not fix the maximum age for admission to Class-1 nor has given any retrospective effect of the “শিক্ষার্থী ভর্তি নীতিমালা”. On the other hand, the respondent School (VNSC) on 19.10.2023 fixed the maximum age which is 4 (four) days prior to publishing the Admission Nitimala dated 23.10.2023 and the same had no validity. On 02.12.2023 the respondent No. 5 (Principal of VNSC) with consultation with the respondent No.2 (DG) decided to admit the students born in the year 2015 and 2016 and disregarded the earlier internal circular fixing the maximum age limit of students born in the year 2017. Thereby

admitted the students born in the year 2015 and 2016 to Class-I including the daughters of the added respondent Nos.8-43.

There was no violation of the terms and conditions of the admission guidelines incorporated in the admission notice dated 17.10.2023 and in publishing the lottery result where the daughters of the respondent Nos. 8-43 became qualified for admission to Class-I of the Viqarunnisa Noon School and College, Dhaka (VNSC). The Admission Monitoring Committee-2024 and all the five members of the Admission Committee-2024 in consultation with the Directorate, decided to admit the students born in the year 2015 and 2016 to Class-I from the Final Result List published on 28.11.2023. Complying the criterion set up by the DG, daughters of the respondents No. 8-43 applied online and won the lottery and admitted to Class-I of the VNSC. The authority concerned has given a fair chance to all, by conducting the fair lottery competition and there was no violation of the fundamental rights of the writ petitioners in the selection through admission procedure. The petitioners have misunderstood the admission regulation and just on the basis of an internal circular of the Viqarunnisa Noon School and College (VNSC) filed the writ petition and obtained the Rule Nisi and direction.

Although, following all procedure the respondent No.2 (DG) and the Admission Committee admitted 169 students and allowed them to start classes but subsequently, the DG vide letter under Memo No. 37.02.0000.107.31.333.2021 (Part-2) .375 dated 22.02.2024 (letter signed on 27.02.2024) directed the Principal, VNSC to cancel the admission of the students born prior to 01.01.2017. Accordingly, the Principal of the VNSC

vide Office Memo dated 04.03.2024 cancelled the admission of 169 students from Class-1 of the VNSC including the daughters of the added respondents No.8-43. Accepting the said decision the High Court Division by order dated 06.03.2024 passed in writ petition No. 421 of 2021 directed the VNSC to fill up the vacant seats. Challenging the said order dated 06.03.2024 the respondent Nos. 8-43 filed CPLA No. 881 of 2024 and the Appellate Division by the order dated 20.03.2024 disposed of the CPLA and directed the parties to maintain status-quo.

On the other hand, challenging the letter under Memo dated 22.02.2024 (signed on 27.02.2024) issued by the DG directing to cancel the admission of 169 students admitted to the VNSC and also the consequent office order under Memo dated 04.03.2024 issued by the VNSC (respondent No.5), the respondent Nos. 8-43 and others (total 120 parents out of those 169 students) filed Writ Petition No. 3903 of 2024 and by order dated 25.03.2024 obtained the Rule Nisi.

The internal circular dated 19.10.2023 issued by the respondent No. 5 (VNSC) had never been communicated to the Directorate. Further, neither the Admission Circular dated 17.10.2023 nor the Admission Nitimala dated 23.10.2023 reflect any instruction to the applicants to follow the internal circular of the School and the said internal circular fixing the maximum age limit for making application for admission to Class-1 of the VNSC was an internal decision of a non-government school issued in private capacity and as such, the Rule Nisi is liable to be discharged on point of maintainability.



After winning the lottery, children of the respondent No.8-43 got admission to Class-I of the Viqarunnisa Noon School and College (VNSC) and paying all the required fees attended the classes. So far, no departmental proceeding nor any complaint has been filed against anyone for alleged corrupt practice or malafidness in giving admission of students at the VNSC in Class-I for the admission year, 2024. Thus, illegal action or corrupt practice, if there is any, the respondent Nos. 2 and 5 (DG and the Principal) most arbitrarily and without giving any chance of hearing to 169 students including the daughters of the added respondent No.8-43 cancelled their admission under interference of the Hon'ble High Court Division in writ Petition No.421 of 2024.

The daughters of the added respondents No.8-43 applied online through the website of the Directorate and complying guidelines provided by the DG, they selected 5 different schools. Thus, the names of the daughters of the added respondents No. 8-43 appeared in the qualified list for admission and the respondent No.5 (Principal) admitted them to Class-I after assessing their birth certificates. But long after three months, when the prospect to get admission in any other school elapsed, pursuant to the application filed by two guardians from the waiting list, the DG and the Principal cancelled admission of 169 students including the daughters of the added respondent Nos. 8-43 violating their fundamental rights guaranteed under Article 32 read with Article 17 of the Constitution.

After placing the writ petitions and the supplementary affidavits thereto as well as other materials on records, Mr. Shameem Sardar, learned

Advocate for the petitioners in writ petition No. 421 of 2024 submits that two admission circulars published by both the Directorate and the VNSC clearly stipulate the age limit 6+ years for the students to be admitted to Class-I. But the result sheets prepared by the DG and published by the VNSC reveal that some students were admitted to Class-I apparently beyond the required age limit and as such those disqualified students cannot be allowed to continue their study in the School. He further submits that although the petitioners as well as a member of the Governing Body of the VNSC raised this issue before the Principal, the Directorate and the concerned Ministry but there was no response on their part in this regard. He also submits that since the admission circular has given specific age limit, there is no scope to admit any student beyond the said age limit. Despite the parents of some students knowing fully about the age limit took the risk to admit their children in the VNSC in connivance with the authority. In support of his submissions, learned Advocate refers to a case published in the website of Manupatra being case of Aarin and others Vs. Kendriya Bidyalaya Sangathan and others reported in MANU/DE/1191/2022.

Mr. Muhammad Rafiul Islam, learned Advocate for the respondent No. 5 (Principal of the VNSC) contends that pursuant to the circular of the Directorate, the VNSC also published the notice both in the VNSC premises including notice board and the VNSC website platform and it was also communicated to the office of the Director General as well as the Metropolitan Admission Committee. He also contends that pursuant to the Nitimala, 2023 the VNSC published a notice on 19.10.2023 furnishing

vacant seats of different classes of the VNSC and the age limit for the students of different classes, in particular, for Class-I it was 01.01.2017 to 31.12.2017. He further contends that the students who were found beyond the age limit, their admissions have been cancelled by the office of the Director General. Pursuant to the said order of the DG, the VNSC also issued the office order on 04.03.2024 cancelling admission of 169 students. He, however, again submits that due to cancellation of admission of those 169 students, the 1<sup>st</sup> and 2<sup>nd</sup> parts of the Rule Nisi have become infructuous and the direction as sought for under the Rule Nisi upon the present private School, the 3<sup>rd</sup> part of the Rule Nisi is not maintainable.

Learned DAG also submits that the age limit 6+ years as mentioned in the circular is below the 7 years and in other words, from day one under age 6 it can be considered up to 365 days under the said year, age 6. He further submits that if in Class-I, the students of different ages are admitted, there would be inequality and imbalance of environment causing different offences in educational institution like bullying etc. He again submits that considering the age bar as provided in the admission circular, the Director General cancelled the admission of the students who were found beyond the age limit and as such, there is no illegality in cancelling the admission of 169 students.

Main contestants in the Rule Nisi of writ petition No. 421 of 2024 are the parents of the students, admission of whom has been cancelled and those parents are also petitioners of another writ petition being No. 3903 of 2024 which has been filed challenging propriety of the order of cancellation of

admission. On their behalf, Mr. Mustafizur Rahman Khan, learned Advocate contends that the admission notification issued by the office of the Directorate itself shows that the required age is 6+ years which means the age of the students have to be minimum 6 years. Although by the Nitimala, 2023 the respondents authority required the upper limit of the age but in the absence of that upper limit in the circular of the Directorate, it cannot confine the age below 7 years. To appreciate his submission on this point, learned Advocate has drawn our attention to some ESIF (Electronic Students Information Form) wherein the authority always provided the minimum and maximum age limit. He also contends that if the age 6+ years is considered both lower and upper, the Nitimala dated 23.10.2023 requiring the concerned institutions to determine the upper limit of age, shall be redundant.

Mr. Khan further contends that the respondents' daughters have got access in the online admission system and thereby they were allowed to participate in the admission process having their disclosed date of birth, both in 2015 and 2016. He again contends that since the admission circular of the Directorate itself reflected all the requirement and the Directorate has given the access for submitting the online application, the students were not required to look into the notification of the School (VNSC) and in fact, having no knowledge about the said age limit given by the VNSC, the parents of the students on bonafide understanding applied through the online system and got admission through lottery.

Learned Advocate has also raised the question of maintainability of writ petition No. 421 of 2024 inasmuch as the students were admitted by a private School and the petitioners did not have any legal right to challenge the said action of a private School. Mr. Khan next contends that there are other institutions, in particular, in the Motijheel Ideal School and College, 35 students born in 2015 and 2016, got admission to Class-1 in 2024 and as such, if the students born in 2015 and 2016 are ousted from the VNSC cancelling their admission, they would be treated in a discriminatory manner.

Last but not the least, Mr. Khan has drawn our attention to apply principles of equity in our judicial review being the fact that these 169 students, at the very beginning of their life, have got the chance to admit in a reputed school and started their class for more than two months. If they are ousted at this moment, they would be dealt with in a harsh manner both in mentally and socially. Where as, the children of petitioners of writ petition No. 421 of 2024 or any other students would not be prejudiced as they have not yet got admission in the VNSC. In support of his submissions learned Advocate refers to a case law published in the website of Manopatra being the case of Javed Akhter and others Vs. Jamia Amdar and others reported in AIR 2007 (NOC) 446(Del).

We have gone through both the writ petitions, affidavits in opposition separately filed by the respondents No.2 (DG) and 5 (Viqarunnisa Noon School and College, Dhaka shortly, the VNSC) in writ petition No. 421 of

2024, supplementary affidavits filed by the parties, the cited cases and other materials on records.

The Directorate of the Secondary and Higher Education, Dhaka (shortly, the Directorate) published an admission notification on 17.10.2023 for admission of students in different Non-Government Secondary Schools under the Metropolitan area as well as District and Upazila Sadar. For better appreciation of the issues in question, relevant portions of the said notification have been quoted here in below:

**“মহানগরী ও জেলার সদর উপজেলা পর্যায়ের বেসরকারি মাধ্যমিক বিদ্যালয়সমূহে  
২০২৪ শিড়্জাবর্ষে ভর্তি বিজ্ঞপ্তি**

ঢাকা মহানগরীসহ সারাদেশের মহানগরী পর্যায়ের বিভাগীয় সদরের মেট্রোপলিটন এলাকা ও জেলার সদর উপজেলা পর্যায়ের বেসরকারি মাধ্যমিক বিদ্যালয়ে ২০২৪ শিড়্জাবর্ষে বিভিন্ন শ্রেণিতে শিড়্জার্থী ভর্তি করা হবে। শিড়্জার্থী ভর্তির ড়োত্রে বিদ্যালয় হতে কোনো ভর্তি ফরম বিতরণ করা হবে না। ভর্তির আবেদন শুধুমাত্র অন-লাইনে <https://gsa/teletalk.com.bd> এই ঠিকানায় পাওয়া যাবে। অন-লাইনে আবেদন গ্রহণের প্রক্রিয়া ২৪/১০/২০২৩ খ্রি. সকাল ১১:০০ টা হতে শুরু হয়ে ১৪/১১/২০২৩ খ্রি. বিকাল ০৫:০০ টা পর্যন্ত চলমান থাকবে। ২০২৪ শিড়্জাবর্ষে ভর্তির আবেদন ফি ১১০/- (একশত দশ) টাকা নির্ধারণ করা হয়েছে যা শুধুমাত্র টেলিটক প্রি-পেইড মোবাইল হতে SMS এর মাধ্যমে প্রদান করা যাবে।

প্রার্থীগণ আবেদনের সময় প্রতিষ্ঠান নির্বাচনকালে মহানগর পর্যায়ের জন্য বিভাগীয় সদরের মেট্রোপলিটন এলাকা এবং জেলার সদর উপজেলা পর্যায়ের শিড়্জা প্রতিষ্ঠানের তালিকা পাবে। এড়োত্রে প্রার্থীগণ প্রাপ্যতার ভিত্তিতে প্রতিটি আবেদনে সর্বোচ্চ ০৫ টি বিদ্যালয় পছন্দের ক্রমানুসারে নির্বাচন করতে পারবে। উল্লেখ্য, ডাবল শিফট প্রতিষ্ঠানের ড়োত্রে উভয় শিফট পছন্দ করলে দুটি পছন্দক্রম সম্পন্ন হয়েছে বলে বিবেচিত হবে। একই পছন্দক্রমের বিদ্যালয় কিংবা শিফট দ্বিতীয় বার পছন্দ করা যাবে না। ২০২৪ শিড়্জাবর্ষে কেন্দ্রীয় ডিজিটাল দৈবচয়ন প্রক্রিয়ার বাইরের প্রতিষ্ঠানসমূহকে শিড়্জা মন্ত্রণালয় কর্তৃক গঠিত (ভর্তি নীতিমালা অনুযায়ী) ভর্তি কমিটির প্রতিনিধির উপস্থিতিতে দৈবচয়ন কার্যক্রমের আয়োজন করতে হবে। ডিজিটাল দৈবচয়নের মাধ্যমে শিড়্জার্থী নির্বাচন প্রক্রিয়া ব্যতিত অন্য কোন পরীড়্জা গ্রহণ করা যাবে না। এছাড়া জাতীয় শিড়্জানীতি-২০১০ ও বেসরকারি মাধ্যমিক বিদ্যালয় শিড়্জার্থী ভর্তির নীতিমালা অনুযায়ী ২০২৪ শিড়্জাবর্ষে ১ম শ্রেণিতে ভর্তির জন্য শিড়্জার্থীর বয়স ৬+ বছর নির্ধারিত হবে।”

The Ministry of Education published the latest Nitimala on 23.10.2023, namely, “-বসরকারী স্কুল, স্কুল এন্ড ক-লজ (মাধ্যমিক, নিম্ন মাধ্যমিক ও সংযুক্ত প্রাথমিক স্তর) শিক্ষার্থী ভর্তি নীতিমালা” (shortly, the Nitimala, 2023) incorporating almost similar rules, like the previous Nitimala dated 08.12.2022. In the said Nitimala, 2023 regarding the age of students to be admitted to Class-1 and other relevant provisions have been provided in the following manner:

**৩.০ শিড়ার্থীর বয়স:** জাতীয় শিড়ানীতি-২০১০ অনুযায়ী ১ম শ্রেণিতে ভর্তির জন্য শিড়ার্থীর বয়স ৬+ বছর হতে হবে। পরবর্তী শ্রেণিসমূহে বয়স নির্ধারণের বিষয়টি প্রথম শ্রেণিতে ভর্তি হওয়া শিড়ার্থীদের ক্ষেত্রে ভবিষ্যতে ধারবাহিকভাবে প্রযোজ্য হবে। ভর্তির বয়সের উর্ধ্বসীমা সংশ্লিষ্ট বিদ্যালয় নির্ধারণ করবে। শিড়ার্থীর বয়স নির্ধারণের জন্য ভর্তির আবেদন ফরমের সঙ্গে অনলাইন জন্ম নিবন্ধন সনদের সত্যায়িত কপি জমা দিতে হবে। বিশেষ চাহিদাসম্পন্ন শিশুদের বয়স নির্ধারণে সর্বোচ্চ ৫ (পাঁচ) বছরের অতিরিক্ত সুবিধা দেয়া যাবে।

**৪.০ শিড়াবর্ষ:** শিড়াবর্ষ হবে ০১ জানুয়ারি থেকে ৩১ ডিসেম্বর পর্যন্ত। প্রতি শ্রেণি শাখায় শিড়ার্থী সংখ্যা হবে ৫৫ জন।

**৫.০ ভর্তি প্রক্রিয়ার ধাপসমূহের তারিখ ও সময় নির্ধারণ:**

৫.১ কেন্দ্রীয়ভাবে ডিজিটাল লটারি অনুষ্ঠানের তারিখ ও সময় মাধ্যমিক ও উচ্চ শিড় বিভাগ, শিড় মন্ত্রণালয় নির্ধারণ করবে;

৫.২ মাধ্যমিক ও উচ্চ শিড় অধিদপ্তর কেন্দ্রীয়ভাবে ডিজিটাল লটারির মাধ্যমে ভর্তি প্রক্রিয়া সংক্রান্ত যাবতীয় কার্যক্রম সম্পন্ন করবে।

.....

৭.৩ ঢাকা মহানগরী ভর্তি কমিটি ডিজিটাল লটারির মাধ্যমে নির্বাচিত শিড়ার্থীদের তালিকা স্ব স্ব শিড় প্রতিষ্ঠানে প্রেরণ করার ব্যবস্থা গ্রহণ করবে। উক্ত তালিকা অনুযায়ী শিড় প্রতিষ্ঠানের ভর্তি কমিটি কাগজপত্র যাচাইপূর্বক (প্রযোজ্য ক্ষেত্রে) নির্ধারিত তারিখ অনুযায়ী ভর্তির প্রয়োজনীয় ব্যবস্থা গ্রহণ করবে।”

(Underlined)

Following the aforesaid Nitimal, 2023, the VNCS under the signature of its Principal (in charge) published a notification on 19.10.2023 furnishing the vacant seats in different classes of the said institution and also specifying the required age limit for admitting students to Class-I and other classes of the VNCS. For our better understanding, relevant portions of the said notification dated 19.10.2023 are quoted herein below:

“২০২৪ শিক্ষাব-র্ষ বাংলা ও ইং-রজি ভাস-ন বিভিন্ন শ্রেণি-ত ভর্তির জন্য বয়সসীমা

শ্রনি	জন্ম তারিখ
প্রথম	১লা জানুয়ারি ২০১৭ থে-ক ৩১ ডি-সম্বর ২০১৭
দ্বিতীয়	১লা জানুয়ারি ২০১৬ থে-ক ৩১ ডি-সম্বর ২০১৬
তৃতীয়	১লা জানুয়ারি ২০১৫ থে-ক ৩১ ডি-সম্বর ২০১৫
নবম	অবশ্যই বো-র্ডর জেএসসি রেজি-স্ট্রশন থাক-ত হ-ব।

”

Pursuant to aforesaid notifications of the Directorate and the VNSC, the parents of the aspirant candidates submitted their respective applications through online system under the designated link <https://gsa.teletalk.com.bd> and on 28.11.2023 the Directorate conducted lottery in presence of the Metropolitan Admission Committee and finally selected 1535 students for Class-I of the VNSC along with 1<sup>st</sup> and 2<sup>nd</sup> waiting list containing similar number of students under the waiting list. Daughters’ names of petitioners of writ petition No. 421 of 2024 have also been appeared in the 1<sup>st</sup> waiting list. Immediately, after publication of the names of the finally selected candidates on 02.12.2023 by the VNSC, one of the members of the Governing Body of the VNSC, for the 1<sup>st</sup> time raised objection on the very day before the Principal of the VNSC stating that there were some students born in 2015 and 2016 in the list of finally selected students and thereby they were the disqualified candidates having the age beyond the prescribed limit. Thereafter, the present petitioner No.1 also filed an application to the Secretary, Secondary and Higher Education Division, Ministry of Education on 10.12.2023 and also filed another application before the Director General of the Directorate on 17.01.2024 seeking their interference to cancel the admission of those students who were found beyond the age limit as



required by the authority concerned. But having no response the petitioners have filed writ petition No. 421 of 2024 and obtained the Rule Nisi.

Question of maintainability of the writ petition has been raised by both the learned Advocates Mr. Mustafizur Rahman Khan and Mr. Muhammad Rafiul Islam but their contentions are different.

Mr. Islam submits that the Rule Nisi partly has become infructuous due to cancellation of admission of 169 students and the other part of the Rule being the decision of the VNSC, a private School is not amenable in writ jurisdiction. Contentions of Mr. Khan are that the VNSC is a private institution and so, its decision dated 02.12.2023 admitting 169 students beyond age cannot be amenable under writ jurisdiction and at the same time the petitioners do not have the locus standi to file this writ petition as there being no legal right accrued in their favour.

To answer this issue, we have examined all the relevant papers. On perusal of the Nitimala dated 23.10.2023 it appears that the entire admission process was conducted by the Secondary and Higher Education Directorate, Dhaka. Relevant portion of the Nitimala dated 23.10.2023 are as follows:

“মাধ্যমিক ও উচ্চ শিক্ষা অধিদপ্তর কেন্দ্রীয়ভাবে ডিজিটাল লটারির মাধ্যমে ভর্তি প্রক্রিয়া সংক্রান্ত যাবতীয় কার্যক্রম সম্পন্ন করবে।”

Thus, we are of the view that the admission process was conducted by the Directorate and that by the decision dated 02.12.2023 admitting students beyond age limit, the VNSC has only implemented the final result prepared by the Directorate. As such, the relief sought for under the Rule Nisi is amenable under judicial review of this Court.

Regarding locus standi of the writ petitioners of writ petition No. 421 of 2024, we find that the petitioners' children are awaiting under a waiting list and in the event of vacancy of seats, they would be entitled to get admission having their required age limit. Therefore, their *locus-standi* is very much clear in the writ petition. Over and above, by these two writ petitions the fundamental point before us is whether these 169 students were admitted as eligible candidates and that their writ petition (filed by parents of 120 those students) has been filed challenging the order of the Directorate cancelling admission of 169 students of the VNSC. This writ petition also warrants the similar answer regarding status of 169 students as to whether they are eligible or not, to get admission to Class-I of the VNSC. Regard being had to the above, both the writ petitions are quite maintainable.

Undisputedly 169 students have been selected finally by the Directorate to admit to Class-1 of the VNSC who were born in 2015 and 2016. Therefore, on calculation of their age it is apparent that on the day of opening the session i.e 01.01.2024 their age appear 8+ years and 7+ years respectively. This scenario led the dispute before us as to whether those students are eligible for getting admission to Class-1 of the VNSC. We find that there are two writ petitions, one (wp 3903/2024) has been filed by the parents of 120 students whose admission has been cancelled by the Directorate issuing an impugned order cancelling admission of 169 students. On the other hand, the 1<sup>st</sup> writ petition (wp 421/2024) has been filed challenging eligibility of those 169 students in terms of their age. Thus, the bone contention appears before the Court under both the Rules Nisi as to

whether the students whose date of birth in the year 2015 and 2016, can be admitted to Class-I of the VNSC. In other words, the core issue to be adjudicated is about the age limit for admission to Class-I of the VNSC.

From the notification of the Directorate dated 17.10.2023 for admission to Class-I it appears that regarding the age of students the notification incorporates the following sentence:

“এছাড়া জাতীয় শিক্ষানীতি-২০১০ ও বেসরকারী মাধ্যমিক বিদ্যালয়ের শিক্ষার্থী ভর্তির নীতিমালা অনুযায়ী ২০২৪ শিক্ষাব-র্ষ ১ম শ্রেণী-ত ভর্তির জন্য শিক্ষার্থীর বয়স ৬+ বছর নির্ধারিত হ-ব।”

In the Nitimala dated 23.10.2023 the age for admission to Class-I has also been provided in the following manner.

“৩.০ শিক্ষার্থীর বয়সঃ জাতীয় শিক্ষানীতিমালা-২০১০ অনুযায়ী ১ম শ্রেণী-ত ভর্তির জন্য শিক্ষার্থীর বয়স ৬+ বছর হ-ত হ-ব। পরবর্তী শ্রেণীসমূহে বয়স নির্ধারণের বিষয়টি প্রথম শ্রেণীতে ভর্তি হওয়া শিক্ষার্থীদের ক্ষেত্রে ভবিষ্যতে ধারাবাহিকভাবে প্রযোজ্য হবে। ভর্তির বয়-সর উধুসীমা সংশ্লিষ্ট বিদ্যালয় নির্ধারণ করি-ব। শিক্ষার্থীর বয়স নির্ধার-নর জন্য ভর্তির আ-বদন ফরমের সঙ্গে অনলাইন জন্ম নিবন্ধন সনদের সত্যায়িত কপি জমা দি-ত হ-ব। বি-শষ চাহিদা সম্পন্ন শিশু-দর বয়স নির্ধার-ন স-র্বাচ্চ ০৫(পাচ) বছরের অতিরিক্ত সুবিধা দেয়া যাবে।”

(Underlined)

On perusal of the aforesaid age clauses, it is apparent that the age limit has already been determined by the admission notification of the Directorate and the Nitimala, 2023 as 6+ years for admission to Class-I. Now question arises as to whether the age of students born in 2015 and 2016 can be considered as the age 6+ years to get admission to Class-1 of the VNSC.

The admission circular dated 17.10.2023 published by the Directorate clearly indicate the age for admission to Class-I is simply 6+ years and there is no word “minimum or maximum” ahead of 6+ years. On the other hand,

the Nitimala, 2022 and the subsequent substituted Nitimala, 2023 although have reiterated the similar sentence regarding age i.e. 6+ years but they have added a further sentence “ভর্তির বয়সের ঊর্ধ্বসামা সংশ্লিষ্ট বিদ্যালয় নির্ধারন করবে” i.e leaving option to the concerned institution to determine the upper limit of the age of students for admission to Class-I. Referring to said sentence, Mr. Khan submits that in the absence of any upper limit of age in the notification of the Directorate and having no knowledge about the VNSC notification specifying age limit, the 169 students’ parents submitted the respective applications, got access in the online admission process and finally selected. He also explains that the digit 6+ years do not limit to the extent of 6 only and rather in the absence of upper limit it can be extended to 7, 8 and upwards.

We are unable to accept this submission inasmuch as every digit has got its own position and identity and so, the digit 7, 8 etc can not be treated or deemed as 6+. Therefore, the digit 6+ means less than 7. If it were 7 or 8 or more, then 7+, 8+ etc would be used. In fact, to introduce the age of a person, the sign ‘+’ is used after the digit to include and identify the fraction of days/months within the year of said digit. There are 365 days within a year and so, when a person crosses his date of birth completing an year and until he crosses another date of birth, he can not reach to the next year. But on the very next day of his date of birth, he is crossing the days and months i.e 365 days or 12 months before reaching to the next year. For example, a person having age of 6 years 10 days or 6 years 5 months etc. are all 6+ years i.e day 01 to day 365 under the age 6 years be treated as 6+ years.

Thus, the digit 6+ years denotes from 6 years to until it reaches to the age 7 years which in other words 6 years inclusive of 365 days i.e. before reaching to the age 7 years. Otherwise, there would be no space for the next digit i.e. 7, 8 and 9 etc. The sign plus (+) is only added with the digit to mean the age 6 years and more days or months within the 6 years and until reaching it at 7 years. Although, in the Nitimala the option for determining upper limit of age is given to the concerned institution but here the admission notification of the Directorate itself and the 1<sup>st</sup> sentence of the Nitimala incorporate the words “শিক্ষার্থীর বয়স ৬+ হ-ত হ-ব”. The same clearly indicate that the age shall be within 12 months or 365 under 6 years but of course, below the 7 years.

Thus, by the words “শিক্ষার্থীর বয়স ৬+ বছর নির্ধারিত হবে” mentioned in the admission notice of the Directorate, itself limited the age within 6 years i.e 365 days under 6 years. It is also supported by the Nitimala dated 23.10.2023 mentioning the words “জাতীয় শিক্ষানীতি-২০১০ অনুযায়ী ১ম শেনীতে ভর্তির জন্য শিক্ষার্থীর বয়স ৬+ বছর হতে হবে।” As such, the VNSC has no scope to extend the age to 7 years or more for admitting students to Class-1.

Since, the Nitimala declared the age 6+ years without using word minimum, the concerned institution can not determine upper limit of age beyond 6+ years. By the Nitimala, 2023 the authority/scope given to the concerned institution to determine upper limit of age, can only be exercised remaining within the period of 365 days under age 6 years. In other words, the VNSC can determine upper limit of age only by reducing the days from 365 days under the age 6 years. Therefore, the digit 6+ itself means the age has to be below the 7 years.

Inspite of aforesaid determination of age for admission to Class-I of the VNSC, exercising authority under the Nitimala, the School (VNSC) has published the notification on 19.10.2023. Here, the VNSC did not reduce the age and rather by specifying the date from 01.01.2017 to 31.12.2017 they have clarified clearly the age limit given by the Directorate's Admission Notification and the Nitimala. As such, there cannot be any ambiguity regarding the age limit for admission to Class-I of the VNSC.

Although learned Advocate for the petitioners of writ petition No. 3903 of 2024 contends that the notification of VNSC determining upper limit of age did not have legal effect being published on 19.10.2023 i.e 4 days ahead of the Nitimala dated 23.10.2023. But the contention is not acceptable because, this Nitimala was substituted by the earlier Nitimala dated 08.12.2022 incorporating almost similar clause regarding age and before publishing subsequent Nitimala, 2023, the earlier Nitimala of 2022 was in force providing authority to the concern institution to determine upper limit of the age.

Mr. Khan takes second attempt contending that the students or their parents did not have the knowledge about the notification of the VNSC specifying the age limit inasmuch as following the notification of Directorate alone, the parents submitted online applications and they did not need to follow the VNSC notification. We are unable to accept this contention because in the Nitimala of the Ministry, the words were written as follows “ভর্তির বয়সের ঊর্ধ্বসীমা সংশ্লিষ্ট বিদ্যালয় নির্ধারণ করি-ব”. These words make it imperative upon the aspirant candidates and their parents to follow the

notification of the VNSC (School) and so they cannot take the plea that they were not aware about the age limit given by the VNSC. Moreover, the Directorate on 17.10.2023 published another circular incorporating guidelines for filling up Admission Form through online wherein it has been clearly stipulated as under:

“ভর্তি সংক্রান্ত বিজ্ঞপ্তি সংশ্লিষ্ট ভর্তি কমিটি/ প্রধান শিক্ষকের নোটিশ বোর্ড থেকে জানা যাবে।”

From the records, it further appears that the VNSC (School) has circulated their notice dated 19.10.2023 (Annexure-C to the writ petition) both in their notice Board and website. Therefore these 169 students or their parents cannot say that they were not required to follow the VNSC (School) notice Board or they did not have knowledge about the VNSC notification. Thus, we are led to hold that the 169 students whose date of birth were in 2015 and 2016 cannot be considered within the age of 6+ years to get admission to Class-I of the VNSC. Of course, they were 7+ and 8+ years on 1<sup>st</sup> January, 2024 and as such, they were not eligible for getting admission to Class-I of the VNSC in view of admission notifications both published by the Directorate and the VNSC (School) itself.

From the impugned order under writ petition No. 3903 of 2024 by which the Directorate cancelled the admission of those 169 students, it appears that the Directorate in one side states that the admission was unlawful and at the same time they plea that upper limit of age decided by the School (VNSC) was not officially communicated to the Directorate. At the same time the parents of the students also assert that they got access in the online admission process for filing application furnishing their date of

birth and being allowed in the system they got the admission and thus there was no fault on their part. In the impugned decision under the writ petition No. 3903 of 2024 by which the admission was cancelled, it is also mentioned that in the software the upper limit of age was not setup to filter the students having over age although in the admission notification the age limit was mentioned. We find that in the admission notification of the Directorate and the Nitimala specifically mentioned the age 6+ years. Since they did not use the word minimum or maximum, the students must be within the range of 6 years old i.e 6 years one day to 6 years inclusive of 365 days as we discussed above.

Therefore, it is of course, negligence and/or mal intention of the authority in not setting up filter method to resist the over aged students and even knowing fully that those 169 students are not eligible in terms of required age, the respondents allowed them to admit to Class-I of the VNSC. Hence, the learned Advocate for the petitioners of writ petition No. 421 of 2024 as well as learned DAG also submit that there may be perpetration of an scam in admitting those students taking undue advantage and keeping gap in the system. This submission, of course, finds merit and the authority has to make an enquiry to ascertain the actual facts inasmuch as due to this gap, present litigation has been arisen and the students who are just beginning their life, facing serious trouble and hardles and thus, they are getting a wrong message at the very beginning of their life. But at the same time the parents of the students cannot avoid their responsibility inasmuch as the age limit 6+ years was published in the notification of the Directorate



and at the same time it was more specifically clarified by the VNSC notification dated 19.10.2023. Thus, knowing fully about the age of their children, they participated in the admission process aiming undue gain.

We have gone through the cited case reported in ALR 2007 (NOC) 446 (Del) (supra) as referred to by Mr. Khan. It reveals that the University admitted the students beyond the age limit, allowed them to attend the classes on receipt of fees. Subsequently the University have again cancelled their admission being found beyond the age limit as per prospectus. In the circumstances, the Court held that the University was estopped to cancel admission due to doctrine of Promissory Estoppel which is the rule of equity. Thus, the students were allowed to continue their academic career at the instance of the Court.

But here in this case, we find that the VNSC is no doubt a reputed educational institution in Bangladesh and the parents are mostly eager to admit their daughters in the said institution. Though a good number of students applied for admission but only 1535 seats are available to get admission through random selection (Lottery). Since it is the very entry point, as per Government policy only the eligible students are entitled to get admission having required age limit and every parents of the aspirant candidates are supposed to be aware by the notification dated 19.10.2023 of the VNSC inasmuch as both the Directorate Notification and the Nitimala, 2023 refer to the concerned institution's notification regarding the age limit.

If anyone wants to take plea of ambiguity of the age 6+ years, but he can not avoid the notice of the VNSC, specifying the age from 01.01.2017 to

31.12.2017. After random selection method although 1535 students were allowed as finally selected candidates but similar number of students are waiting under the waiting list to get the admission. Thus, it is a crucial event making two groups face to face; one group who got the admission having the age beyond required limit and the other group under the waiting list who are not getting admission even being selected through the lottery method and having appropriate age required by the authority.

In this context, Mr. Khan has sought our judicial review applying principles of equity. Of course, we are deeply concerned about all the students who are just beginning their career entering into educational institution and those 169 students who are facing this hurdle being admitted in the VNSC. But their parents cannot avoid their responsibility who ought to have more cautious to take their children in the School (VNSC) for admission keeping in mind about the age limit. Though they started their classes for about two months but on the other hand, similar number of students under the waiting list are following their fate and to see whether those 169 students are going to be allowed to continue the class despite having no eligibility to get the admission. In other words, whether the eligible students in terms of age would be deprived of by an action allowing the ineligible students to continue their classes. Inasmuch as if the ineligible students are removed, the 169 vacant seats shall be filled up from the waiting list who are enlisted here having their required age.

In spite of clear age limit, the authority allowed those 169 students to get the admission initially and if the petitioners of writ petition No. 421 of

2024 would not come to the Court this misdoing shall continue allowing those ineligible students' admission in the School. But it happened reversed due to issuance of the present Rule Nisi and at the instance of the parents of students who are in the waiting list.

Therefore, if this misdoing is allowed it will amount to putting a premium on the perpetration of misdoing. A Court of law cannot be a part of any premium on the misdoing perpetrated by any person. It is the established principle that Equity will not allow a wrongdoer to profit by a wrong. Further, if this misdoing is allowed, both the 169 students and also their counter part under the waiting list, shall get a negative message at the very beginning of their life from their respective positions.

Considering the above facts and circumstances, we are unable to accept the submissions of Mr. Khan on the point of equity. Further the case cited by him is not applicable in this particular case, because of its distinct fact inasmuch as in that particular case the University admitted the students and they again cancelled their admission and there was none in the waiting list or there was no persons aggrieved other than those students whose admission was cancelled. But here in this case the Directorate and the VNCS admitted the ineligible students. The students or parents who could not get the admission and awaiting under the waiting list, they have come forward to the Court seeking appropriate remedies and that the admission was cancelled after issuance of the Rule Nisi. Therefore, the cited case is not applicable.

Although learned Advocate has raised the question of discrimination referring to Motijheel Ideal School and College but a wrong doer can not

take the benefit of his wrong raising the plea of discrimination. Moreover, it is a different institution and hence, facts and circumstances are also different.

In view of above discussions, we find merit in the Rule Nisi issued in Writ Petition No. 421 of 2024. However, the Rule Nisi issued in writ petition No. 3903 of 2024 fails.

**In the result, the Rule Nisi issued in writ petition No. 421 of 2024 is made absolute and the Rule Nisi issued in Writ Petition No. 3903 of 2024 is discharged. However, there will be no order as to cost.**

**The Directorate, The Metropolitan Admission Committee, Dhaka and the VNSC are directed to fill up the vacant seats from the waiting list serially within 15 (fifteen) days from date.**

Before parting with the matter, we are of the view that the admission process conducted by the Directorate keeping some lacuna, in particular, without setting any program in the software for filtering the candidates in terms of prescribed age limit; taking decision on 02.12.2023 to admit 169 ineligible students and other irregularities, have to be looked into by an enquiry in order to detect the perpetrators to protect the recurrence of such incident in future, so that the innocent children cannot be subjected due to such negligence, inefficiency and misdeeds of the authority. The respondent No. 1 shall enquire into the whole admission process of the VNSC. The Enquiry Committee shall make suggestions for introducing better admission procedure and to find out the perpetrators. The respondent No. 1 shall take action against the perpetrators to be identified, in accordance with law.

**In this regard, the Secretary, Secondary and Higher Education Division, Ministry of Education (respondent No.1) is directed to constitute a 03(three) member committee headed by an officer of his Ministry not below the rank of Additional Secretary; a member from the Secondary and Higher Secondary Education Board, Dhaka and another, the Information Technology (I.T) expert from the Bangladesh University of Engineering and Technology (BUET).**

Communicate a copy of this judgment and order to the respondents at once.

Let a copy of the Judgment and Order be communicated to the (i) Secretary, Secondary and Higher Education Division, Ministry of Education, (Respondent No.1) (ii) the Vice Chancellor, BUET and (iii) the Chairman, Secondary and Higher Secondary Education Board, Dhaka at once for their information and necessary action by nominating the member of the enquiry committee.

***Razik Al Jalil, J***

I agree.