

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

Writ Petition No. 5055 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:

Md. Tajul Islam Taj

....Petitioner

Versus

Government of the People's Republic of  
Bangladesh, represented by the Secretary,  
Ministry of Local Government, Rural  
Development and Co-operatives, Bangladesh  
Secretariat, Ramna, Dhaka and others

....Respondents

Mr. Ahsanul Karim, Senior Advocate with  
Mr. Sohel Rana, Advocate and

... For the Petitioner

Mr. A.M. Amin Uddin, Attorney General, with  
Mr. Muhammad Khalequzzaman Bhuiyan,  
Advocate

.... For the respondent No. 2

Mr. Probir Negogi Senior Advocate with  
Mr. Nurul Alam, Advocate

....For the Respondent No. 7

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Akhtaruzzaman

Judgment on 05.06.2024.

Md. Iqbal Kabir, J:

This Rule was under adjudication, at the instance of the petitioner,  
issued on 09-05-2024, and was in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to  
show cause as to why the impugned order dated  
28.04.2024 (Annexure-F) passed by the Deputy  
Commissioner, Moulvibazar and Appeal Authority

(respondent No. 4), 6<sup>th</sup> Upazilla Parishad General Election, 2024 in Appeal No. 01 of 2024 allowing the same and thereby setting aside the order dated 23.04.2024 (Annexure-D) passed by the Additional Deputy Commissioner (General), Moulovibazar and Returning Officer (Respondent No. 5), 6<sup>th</sup> Upazilla Parishad Election, 2024 (Moulovibazar Sadar) accepting the nomination paper of the petitioner for the post of Chairman of Moulovibazar Sadar Upazilla Parishad, Moulovibazar and thereafter publication of Public Notice being No. 05. 46. 5800. 005. 13. 001. 24-310 dated 02.05.2024 (Annexure-H to the supplementary affidavit) published under the signature of Additional Deputy Commissioner, (General) and Returning Officer, 6<sup>th</sup> Upazilla Parishad Election, 2024 (Rajnagar, Moulovibazar Sadar), Moulovibazar declaring Mr. Md. Kamal Hossain (respondent No. 7) elected treating him uncontested should not be declared to have been done without any lawful authority and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule, this Court stayed the order passed by respondent No. 4 and allowed the petitioner to participate in the 6<sup>th</sup> Upazilla Parishad General Election, 2024 for the post of Chairman of Moulovibazar Sadar Upazilla Parishad, Moulovibazar.

The short facts narrated in this application are that the petitioner is a law-abiding, peace-loving citizen of Bangladesh. The petitioner is a social worker and local politician. He was the elected Chairman of No. 11, Mostafapur Union Parishad, Moulovibazar. The petitioner decided to participate in the Upazilla Parishad Election and to contest the said election resigned from the post of Chairman of Mostafapur Union Parishad. However, being an interested candidate submitted his nomination paper through an online server for the post of Chairman of Moulovibazar Sadar Upazilla Parishad. Petitioner duly filled up the nomination paper, wherein stated the name and details of the case in his affidavit along with his nomination paper. Upon scrutiny Respondent No. 5 accepted the nomination paper vide its order dated 23.04.2024. Against which, being aggrieved by the aforesaid decision of the Returning Officer respondent No. 7 preferred an appeal before the Appellate Authority i.e., respondent No. 4. Respondent No. 4, Appellate Authority heard Appeal No. 1/2024, and upon hearing the same, it was allowed vide order dated 28.04.2024, and thereby set aside the order of acceptance of the nomination paper of the petitioner.

It is at this juncture, being aggrieved by and dissatisfied with the aforesaid order, that the petitioner brought this application before this Court and obtained the Rule and Interim order as stated above.

It is to be noted that respondent No. 7 traveled to the Appellate Division against the interim order of this Court. However, the Apex Court sent this matter to this Court to dispose of the Rule.

Mr. Ahsanul Karim, learned Senior Advocate having placed the petition brings notice that the petitioner submitted a nomination paper to participate in the Election for the post of Chairman, and the nomination paper of the petitioner was accepted by the returning officer. Against which the contesting candidate filed an appeal for cancellation of the nomination paper. The appeal was eventually allowed in contravention of the provisions laid down in the Law. However, referring to the provision of Rule 18 of the Upazila Parishad Election Rule, 2013 submits that under the law, the candidate himself may prefer an appeal against the order of cancellation of the nomination paper, and secondly, any officer of the Bank or financial institution concerned may prefer an appeal impugning the order of acceptance of nomination paper. But in this present case, respondent No. 7 being one of the contestants of the election, violating the law, rules, and procedure illegally filed the Election Appeal to respondent No. 4 which was eventually accepted by respondent No. 4 in contravention with the provisions laid down in law. According to him, the respondent had no authority to admit and dispose of the above-mentioned appeal. He claims it was no appeal in the eye of the law. Respondent No. 4 had acted coram prejudice in exercising its power in the disputed matter.

Respondent No. 2, Election Commission contested the Rule by filing an affidavit-in-opposition.

Mr. A.M. Amin Uddin, the learned Attorney General in support of the contention of respondent No. 2 submits that the petitioner was convicted in a criminal case involving moral turpitude and was awarded five five-year sentences. Allege award of sentence and conviction was not disclosed by the petitioner at the time of submitting the nomination paper. He claims the petitioner is disqualified to participate in the ensuing election as the petitioner being convicted and sentenced to imprisonment for not less than two years is disqualified ab initio for taking part in the Upazila Parishad Election as per section 8, sub-section 2(gha) of the Upazila Parishad Act, 1998.

He claims that the petitioner is a habitual offender and as many as 11 cases are pending against him. According to him Respondent No. 4 in the Appeal found that the present petitioner is guilty and was convicted for five years involving moral turpitude and thus canceled the nomination paper following section 8(2)(Gha) of the Upzilla Parishad Ain-1998. He submits criminal revision before this court does not exempt the petitioner from the conviction and sentence awarded to him by the trial court which was eventually affirmed by the lower appellate court as such the impugned order dated 28-04-2024 does not in any manner be interfered with by this Court.

Against which Mr. Karim, Senior Advocate for the petitioner reiterated his earlier submission and claimed that moral turpitude explained in the proviso under section 13(1)(আ) of the Upazila Parishad Act, 1998 that was formulated by the legislature only to remove the elected Chairman concerned of the Upazila Parishad in the circumstances contained therein and not for debarring a person disqualifying him sitting in an election process as a candidate.

Respondent No. 2 claims that the post of Chairman of Upazilla is the trustee of power, property, and well-being of the people, and any person for such a public post must have high moral character and the highest level of integrity. Any such deviation from honesty and integrity is considered moral turpitude. In that context, respondent No. 4 rightly allowed the appeal and thereby set aside the decision of respondent No. 5 who accepted the nomination paper.

Mr. A.M. Amin Uddin, the learned Attorney General, submits that under section 426(1) of the Code of Criminal Procedure, the Appellate Court can only suspend the execution of the sentence pending disposal of the appeal and thus, on mere suspension of the execution of the sentence the order of conviction does not ipso facto lose its effect. It is a settled principle of law that conviction cannot be stayed under section 426 of the Code of Criminal Procedure. According to him merely taking advantage of the admission of Criminal Appeal by the appellate Court/High Court without any order of suspension of conviction and sentence of imprisonment in any manner, the convict writ petitioner will not be exonerated from the disqualification to contest in the 6<sup>th</sup> Upazilla Parishad General Election, 2024 from Moulvibazar Sadar, Moulvibazar.

Mr. Probir Neogi, the learned Senior Advocate appeared on behalf of respondent No.7 and adopted the submissions advanced by the learned Attorney General.

However, on behalf of Respondent No. 7, Mr. Neogi submits that the petitioner herein has been convicted and sentenced to rigorous imprisonment for 5 (five) years under section 392 of the Penal Code, 1868 and the order of conviction and sentence having been affirmed by the appellate Court against which writ petitioner filed Criminal Revision No. 1046 of 2011 which is still pending and accordingly, the acceptance of nomination paper of the said petitioner violates section 8 (2) (Gha) of Upazila Parishad Ain, 1998.

He submits that the definition of moral turpitude having been given in the proviso under section 13 of the Upazila Parishad Ain, 1998 and the offence under section 392 of the Penal Code, 1868 having been attracted by the definition, therefore, illegality has been made by the returning officer in accepting the nomination paper.

This Court perused the writ petition, and other materials including the impugned order, and affidavit-in-opposition, and also considered the submission made by the parties.

In this case, the candidature of the petitioner had been challenged by respondent No. 7 while the nomination paper of the petitioner was accepted. It was argued that respondent No. 7 had no authority to file such an appeal under the Law. Therefore, the question has arisen as to whether the petitioner will be allowed to participate in the ensuing Upazilla Parishad Election as the conviction and sentence have been awarded to the petitioner for the offence of moral turpitude.

It transpired that the petitioner had been convicted in a case under section 392 of the Penal Code and sentenced thereto to suffer rigorous imprisonment for five years. Against such conviction and sentence, the petitioner preferred an appeal which was dismissed, and thereby the conviction and sentence were upheld. The petitioner preferred Criminal Revision against such a decision passed in the appeal and said Criminal Revision is pending, but he obtained bail. Further, it appears that the petitioner without providing the required information made an affidavit in support of his nomination paper, and submitted it online. However, on a plain reading, it appears, that the petitioner did not disclose the judgment and order by which conviction and sentence have been awarded against him. Such material suppression gives the impression that the petitioner is

eligible to be a candidate and accordingly, the nomination paper was accepted. In this context, it can be said petitioner does not come with a clean hand and is not entitled to get relief from this Court. However, challenging the alleged acceptance of such nomination paper, Respondent No.7 contesting candidate preferred Appeal No. 1 of 2024 before Respondent No. 4, who by the impugned order allowed the appeal and thereby, cancelled the nomination paper of the petitioner.

Rule 18 of the Upazila Parishad Election Bidhimala-2013 deals with an Appeal against the acceptance of the nomination paper. For our better understanding, Rule 18 is reproducing herein below:

- “১৮। মনোনয়নপত্র গ্রহণ বা বাতিল আদেশের বিরুদ্ধে আপীল।-(১) বিধি ১৭ এর উপ-বিধি (৩) এর অধীন রিটার্নিং অফিসার কর্তৃক কোন প্রার্থীর মনোনয়নপত্র বাতিল করা হইলে উক্ত প্রার্থী মনোনয়নপত্র বাছাইয়ের তারিখের পরবর্তী ৩(তিন) দিনের মধ্যে উক্ত বাতিল আদেশের বিরুদ্ধে উপ-বিধি (৩) এর অধীন নিযুক্ত কর্তৃপক্ষের নিকট আপীল করিতে পারিবে।
- (২) যদি কোন ব্যাংক বা আর্থিক প্রতিষ্ঠানের কোন কর্মকর্তা, বিধি ১৭ এর উপ-বিধি (৪) এর অধীন মনোনয়নপত্র গ্রহণ সম্পর্কে প্রদত্ত রিটার্নিং অফিসারের আদেশে সংশ্লিষ্ট হন, তাহা হইলে উক্ত কর্মকর্তা মনোনয়নপত্র বাছাইয়ের তারিখের পরবর্তী ৩(তিন) দিনের মধ্যে উপ-বিধি (৩) এ উল্লিখিত আপীল কর্তৃপক্ষের নিকট আপীল করিতে পারিবেন।
- (৩) উপ-বিধি (১) ও (২) এর উদ্দেশ্য পূরণকল্পে কমিশন একজন সরকারি কর্মকর্তাকে আপীল কর্তৃপক্ষ হিসাবে নিয়োগ করিবে এবং বিধি ১৩ এর উপ-বিধি (১) এর অধীন প্রজ্ঞাপন বা উপ-বিধি ১৩ এর উপ-বিধি (৩) এর অধীন বিজ্ঞপ্তি জারীর সময়েই উক্তরূপ নিয়োগ সরকারী গেজেটে প্রকাশ করিবে।
- (৪) মনোনয়নপত্র গ্রহণ বা বাতিলের বিরুদ্ধে আপীল, সরসরি বা যেরূপ প্রয়োজনীয় বলিয়া বিবেচিত হইবে সেইরূপ সংক্ষিপ্ত তদন্তের পর, উহা দায়েরের তারিখ হইতে ৩(তিন) দিনের মধ্যে নিষ্পত্তি করিতে হইবে এবং অনুরূপ আপীলের ক্ষেত্রে গৃহীত সিদ্ধান্ত চূড়ান্ত হইবে।”

From the plain reading of the above provision, it is clear to us that the candidate himself may prefer an appeal against the order of cancellation of the nomination paper, and secondly, any officer of the Bank or financial institution concerned may prefer an appeal impugning the order of acceptance of nomination paper. In the presence of such provision respondent, No. 7 one of the contestants of the election cannot challenge such acceptance in an appeal, therefore, the appeal was coram non-judice.

However, the fact remains that the petitioner was convicted of an offense punishable under section 392 of the Penal Code and was sentenced to suffer rigorous imprisonment for five years. Against the said conviction and sentence the petitioner preferred appeal and the appeal was dismissed. Thereafter, the petitioner preferred Criminal Revision in the year 2011, but since a long, the Revision is pending, and the petitioner did not take the initiative for its disposal. At this juncture, it is

pertinent to state that it is a settled proposition of law that conviction cannot be stayed under section 426 of the Code of Criminal Procedure. Further, it has brought notice pending appeal against the conviction will not qualify a person to contest an election who is disqualified for the reason of conviction.

Section 8(2) (Gha) of Upazilla Parishad Ain, 1998 deals with disqualification or eligibility of a candidature who would be disqualified to be elected as Chairman of Upazilla Parishad in case of conviction awarded for any offense of moral turpitude. For our better understanding, the provision is reproduced herein below:

“৮ (২) (ঘ) কোন নৈতিক স্থলনজনিত ফৌজদারি অপরাধে দোষী সাব্যস্ত হইয়া অনূন দুই বৎসর কারাদণ্ডে দণ্ডিত হন এবং তাঁহার মুক্তি লাভের পর পাঁচ বৎসর অতিবাহিত না হইয়া থাকে;”

The definition of moral turpitude has been laid down under the proviso of section 13 of the Upazilla Parishad Ain 1998:

“(১৩)। চেয়ারম্যান ইত্যাদির অপসারণঃ (১) চেয়ারম্যান, ভাইস চেয়ারম্যান বা মহিলা সদস্যসহ যে কোন সদস্য তাঁহার স্থায় পদ হইতে অপসারণযোগ্য হইবেন, যদি তিনি-

(খ) পরিষদ বা রাস্ট্রের স্বার্থের হানিকর কোন কার্যকলাপে জড়িত থাকেন অথবা নৈতিক স্থলনজনিত অপরাধে আদালত কর্তৃক দণ্ডপ্রাপ্ত হন;”

Upon combined reading of the above provision of law along with the definition, it appears that a person shall be disqualified to contest in an election or after the election be disqualified to continue as Upazilla Parishad Chairman who has been amongst others convicted for a criminal offense involving moral turpitude and sentenced to imprisonment for a term of not less than two years unless a period of five years has elapsed since his release. Further, decisions of this Court make it clear that a person shall be disqualified for election as a Chairman of Upazilla Parishad on conviction for a criminal offence involving moral turpitude and sentenced to imprisonment for a term of not less than two years (authority reported in 21 BLD (AD) 142).

In the present case, the petitioner wishes to contest the post of Chairman of Upazilla Parishad, though he was convicted under section 392 of the Penal Code and sentence of imprisonment for five years was awarded by the court, and as such, he is not qualified to do so. Therefore, no scope to remove the disqualification of his candidature and no scope to claim that the petitioner shall be qualified as Revision is pending.

Indeed the Revision shall not qualify the candidature of a person to contest in an election who is disqualified for the reason of conviction.

It is noted that I have respectful agreement with the principle enunciated in the decisions cited by the petitioner. But those are not applicable in the case at hand as facts and circumstances are different.

However, predicated on the above an entire gamut of issues convinced the undersigned that there is no scope under the prerogative power of this Court to allow the petitioner to contest the election.

Indeed the petitioner is ineligible to be a candidate and there is no scope to direct the respondents to allow the petitioner to contest the election, given the above, the simple declaration that the impugned order is without jurisdiction is redundant.

The application by the convict petitioner is, therefore, held to be misconceived and, thus, the rule is liable to be discharged only on this ground alone.

Resultantly, the Rule Nisi is discharged.

There will be no order as to cost.

Communicate the order.

Md. Akhtaruzzaman, J.

I have had the opportunity of going through the draft copy of the judgment and order proposed to be delivered by My Lord Mr. Justice Md. Iqbal Kabir. 1, with due respect, am disagreeing with the views expressed by him and decided to pronounce a separate judgment.

Mr. Ahsanul Karim, the learned Senior Advocate with Mr. Sohel Rana, the learned Advocate appearing for the petitioner at the outset submits that the petitioner was an elected Chairman of No. 11 Mostafapur Union Parishad under Moulovibazar Sadar Upazila who decided to participate in the upcoming 6th Upazila Parishad Election, 2024 for the post of Chairman of Moulovibazar Sadar Upazila Parishad and accordingly resigned from his earlier position which was accepted on 16.04.2024 by the proper authority. He next submits that as per election schedule declared by the Election Commission, the petitioner submitted his nomination paper through online server and after scrutiny it was duly accepted by the Returning Officer vide order dated 23.04.2024. Referring to the provisions of Rule 18 of the উপজেলা পরিষদ নির্বাচন বিধিমালা, ২০১৩. Mr. Ahsanul Karim submits that under the existing Rules firstly, the candidate himself may prefer appeal against the order of cancellation of nomination paper; and secondly, any officer of the Bank or Financial Institution concerned may prefer appeal impugning the order of acceptance of the nomination paper before the appellate authority if the candidate be a loan defaulter. But in the present case, Respondent No. 7 being one of

the contestants of the Election, violating the relevant rules and procedures most illegally filed Election Appeal No. 01 of 2024 before the Deputy Commissioner, Moulovibazar as well as the appellate authority (Respondent No.4) which was eventually accepted by the said authority in contravention with the provisions laid down in Rule 18 of the *Bidhimala*. Referring to the decisions reported in 17 DLR (AD) 181, 39 DLR (AD) 01, 33 DLR (AD) 154, 10 BLT (AD) 4, 43 DLR (AD) 129, 64 DLR (AD) 65, 66 DLR 5, 29 BLC (AD) 01 and 3 ADC 23. Mr. Karim submits that Respondent No. 4 had no authority to admit and dispose of the above mentioned appeal since it was no appeal in the eye of law. According to him, the Respondent No. 4 had acted *coram nonjudice* in exercising her power in the disputed matter. The learned Advocate explains every nooks and corners of the provisions of sections 8 and 13 of the উপজেলা পরিষদ আইন, ১৯৯৮ and submits that admittedly the petitioner was convicted in a criminal case against which he filed a criminal appeal and it was disallowed by the lower Appellate Court and further he filed a criminal revision against the judgment and order passed by the learned Additional Sessions Judge, Moulovibazar which is now pending before this Court and the petitioner in the nomination paper had mentioned the number and status of the said criminal revision and upon inquiring into the matter, the Returning Officer validly accepted it seeing that the petitioner was not convicted under sections 189, 192, 213, 332, 333 and 353 of the Penal Code during the last 5 (five) years which disqualifies him in competing the upcoming Upazila Parishad

Election, 2024. In this respect, the learned Advocate submits that the judgment of GR Case No. 122/2005 (Kulaura) was delivered by the trial Court on 13.04.2011 but the learned Additional Sessions Judge, Moulovibazar most hurriedly disposed of Criminal Appeal No. 34 of 2011 on 19.06.2011 with a span of only 2(two) months from the date of delivery of judgment passed by the trial Court which is very unusual in our country where there is a huge backlog of very old cases and the present petitioner preferred Criminal Revision No. 1046/2011 in this Court which is now pending. Mr. Karim contends that neither the trial Court nor the lower Appellate Court examined the informant of the said criminal case and the prosecution though failed to establish the charge against the present petitioner beyond reasonable doubt, in spite of that the Courts below most arbitrarily convicted and sentenced the petitioner against which he preferred the criminal revision. The learned Advocate submits that before final adjudication of the said criminal revision the petitioner should be treated innocent and should not be considered as a convict. But by the impugned order dated 28.04.2024 the Respondent No. 4 most illegally cancelled his nomination paper which needs to be examined by this Court. As regards moral turpitude explained in the Explanation annexed to Section 13(1)(আ) of the উপজেলা পরিষদ আইন, ১৯৯৮ (amended in 2011). Mr. Karim candidly contends that those provisions were formulated by the Legislature only for removing the elected Chairman or Vice-Chairman of the concerned Upazila Parishad in the circumstances contained therein and not for debarring

a person disqualifying him to be seated in an election process as a candidate. The learned Advocate finally submits that in spite of pending of the instant writ petition the Respondent No. 5 with a malafide intention published a public notice dated 02.05.2024 declaring the Respondent No. 7 elected treating him uncontested which was not issued in accordance with law.

Per contra, Mr. AM Amin Uddin, the learned Attorney General appearing for the Respondent No. 2 at the outset submits that the petitioner was convicted for 5(five) years in a criminal case by a competent Court but this matter was not disclosed by him at the time of submitting the nomination paper. The learned Attorney General put attention of this Court on the judgment and order passed by the trial Court dated 13.04.2011 and submits that the petitioner is a habitual offender since as many as 11(eleven) cases have been pending in different courts against him and hiding all these matters he submitted the nomination paper. According to him, though his nomination paper was initially accepted as valid by the Returning Officer (Respondent No.5) but on the basis of complaint made by Respondent No. 7 Election Appeal No. 01 of 2024 was admitted in hearing by the Respondent No. 4 and upon taking hearings from the contending parties the appellate authority found the present petitioner guilty of moral turpitude and accordingly his nomination paper was cancelled. The learned Attorney General submits that in the criminal revision though the fine was stayed but the sentence imposed upon the petitioner was not stayed by this Court and, as such, his

conviction is pending and for the reason the petitioner is not at all qualified to contest the upcoming Upazila Parishad Election. The learned Attorney General also submits that sections 8 and 13 of the উপজেলা পরিষদ আইন, ১৯৯৮ be read together to find out the real intention of the Legislature and if the two sections be considered together then it would be clear that section 13 is dependent on section 8 of the Ain which debars the petitioner in contesting the upcoming Election

Mr. Phobir Neogi, the learned Senior Advocate with Mr. Nurul Alam, the learned Advocate appearing for the Respondent No. 7 submits that the petitioner having convicted and sentenced rigorous imprisonment for 5(five) years under section 392 of the Penal Code and the said order of conviction and sentence had been affirmed by the appellate Court against which the present petitioner filed a criminal revision and it is still pending. The learned Advocate contends that the conviction and sentence awarded under section 392 of the Penal Code attracted the definition of moral turpitude, but the Respondent No. 5, the Returning Officer, committed illegality in accepting the nomination paper of the petitioner though he is bar by the statutory provision of section 8(2)(Gha) of the Ain. Mr. Neogi finally submits that law does not debar this respondent to file Election Appeal No.01 of 2024 and the Respondent No. 4 upon correctly admitted the appeal in hearing and had rightly allowed the said appeal, as such, the impugned order needs no interference by this Court.

Heard the learned Advocates of the both the sides, perused the writ petition, supplementary affidavit filed by the petitioner, affidavit-in-oppositions filed on behalf of Respondent Nos. 2 and 7, the judgment and order passed by the learned Chief Judicial Magistrate, Moulovibazar in GR No. 122/2005 (Kulaura) dated 13.04.2011, judgment and order passed by the learned Additional Sessions Judge, Moulovibazar in Criminal Appeal No. 34 of 2011 dated 19.06.2011 and materials on record. I have also considered the submissions made by the learned Advocates, the relevant laws/rules and the decisions cited by the respective parties.

Upon hearing the respective parties, the moot question before this Court is whether the respondent No. 7 lawfully preferred Election Appeal No. 01 of 2024 and whether the order dated 28.04.2024 passed by the Respondent No. 4 in the said appeal is lawful or not?

The learned Advocate of the Respondent No.7 submits that there is no clear provision in law which debars the respondent in filing Election Appeal No. 01 of 2024. According to him, the Respondent No.4 has lawfully admitted the appeal and passed the impugned order. But in respect of maintainability of the said appeal, the learned Advocate of the instant writ petitioner submits that under Rule 18 of the উপজেলা পরিষদ নির্বাচন বিধিমালা, ২০১৩, Respondent No.7 being one of the contestant has no *locus standi* in preferring the above mentioned appeal.

For ready reference, Rule 18 of the উপজেলা পরিষদ নির্বাচন বিধিমালা, ২০১৩ is reproduced below:

“১৮। মনোনয়নপত্র গ্রহণ বা বাতিল আদেশের বিরুদ্ধে আপীল। (১) বিধি ১৭ এর উপ-বিধি (৩) এর অধীন রিটার্নিং অফিসার কর্তৃক কোন প্রার্থীর মনোনয়নপত্র বাতিল করা হইলে উক্ত প্রার্থী মনোনয়নপত্র বাছাইয়ের তারিখের পরবর্তী ৩ (তিন) দিনের মধ্যে উক্ত বাতিল আদেশের বিরুদ্ধে উপ-বিধি (৩) এর অধীন নিযুক্ত কর্তৃপক্ষের নিকট আপীল করিতে পারিবেন।

(২) যদি কোন ব্যাংক বা আর্থিক প্রতিষ্ঠানের কোন কর্মকর্তা, বিধি ১৭ এর উপ-বিধি (৪) এর অধীন মনোনয়নপত্র গ্রহণ সম্পর্কে প্রদত্ত রিটার্নিং অফিসারের আদেশে সংক্ষুব্ধ হন, তাহা হইলে উক্ত কর্মকর্তা মনোনয়নপত্র বাছাইয়ের তারিখের পরবর্তী ৩ (তিন) দিনের মধ্যে উপ-বিধি(৩) এ উল্লিখিত আপীল কর্তৃপক্ষের নিকট আপীল করিতে পারিবেন।

৩) উপ-বিধি (১) ও (২) এর উদ্দেশ্য পূরণকল্পে কমিশন একজন সরকারি কর্মকর্তাকে আপীল কর্তৃপক্ষ হিসাবে নিয়োগ করিবে এবং বিধি ১৩ এর উপ-বিধি (১) এর অধীন প্রজ্ঞাপন বা উপ-বিধি ১৩ এর উপ-বিধি (৩) এর অধীন বিজ্ঞপ্তি জারীর সময়েই উক্তরূপ নিয়োগ সরকারী গেজেটে প্রকাশ করিবে।

(৪) মনোনয়নপত্র গ্রহণ বা বাতিলের বিরুদ্ধে আপীল, সরাসরি অথবা যেরূপ প্রয়োজনীয় বলিয়া বিবেচিত হইবে সেইরূপ সংক্ষিপ্ত তদন্তের পর, উহা দায়েরের তারিখ হইতে ৩(তিন) দিনের মধ্যে নিষ্পত্তি করিতে হইবে এবং অনুরূপ আপীলের ক্ষেত্রে গৃহীত সিদ্ধান্ত চূড়ান্ত হইবে।”

[Underlining for giving emphasis)

From a plain and meticulous reading of that Rule it is crystal clear that the candidate himself may prefer appeal against the order of cancellation of his nomination paper, and, any officer of the Bank or Financial Institution concerned may prefer appeal impugning the order of acceptance of nomination paper.

In the case of *Fazar Ali @ Manik Chand v. Fazar Ali* (43 DLR (AD) 129] it was held by our Apex Court that the appeal was not preferred by the State. It appears that the appeal against the order of acquittal was filed before the High Court Division by a witness named in the charge-sheet, . . . . Hence, this leave petition is not maintainable in law.

In the instant case in hand, the appeal was preferred by the Respondent No.7 who was not an officer of any Bank or Financial Institution. As such, the Respondent No. 7 had no *locus standi* in

filing the said appeal. Since Rule 18(2) of the উপজেলা পরিষদ নির্বাচন বিধিমালা, ২০১৩ does not allow this respondent in preferring the disputed appeal, in this circumstances my considered view is that the very initiation of Election Appeal No. 01 of 2024 before the Respondent No.4 was without any lawful authority.

The learned Advocate of the petitioner submits that the appeal was preferred by a contesting candidate (Respondent No.7) who does not have legal mandate to prefer the said appeal but the Respondent No.4 though was *coramnonjudice* in spite of that most illegally admitted as well as allowed the appeal holding that the petitioner has been convicted in a criminal case. Mr. Ahsanul Karim, the learned Senior Advocate contends that in deciding the appeal, the Respondent No. 4 had hopelessly failed to consider that the said judgment and order of conviction and sentence is still under challenge in this Court and the same has not yet been final.

It is evident from the record that in the nomination paper the petitioner had mentioned the number of cases filed against him as well as the results thereof. It was also mentioned therein that Criminal Revision No. 1046 of 2011 filed by the petitioner has been pending in this Court. The Returning Officer (Respondent No.5) perused all the documents annexed to the nomination paper and thereafter accepted the same on 23.04.2024. In accepting the nomination paper (Annexure-D) valid, the Returning Officer observed:

“উক্ত প্রার্থীর অনলাইনে আবেদনকৃত ফরমে উল্লেখিত তথ্য যাচাই করা হয়েছে। সকল মূল কাগজপত্র, ব্যাংক হতে প্রাপ্ত রিপোর্ট, থানা হতে প্রাপ্ত মামলা সংক্রান্ত তথ্য যাচাই করে এবং অন্য কোন আপত্তি না থাকায় উক্ত মনোনয়নপত্র যাচাই বাছাইয়াস্বে গৃহীত হল।”

From the above, it appears that Respondent No. 5 had inquired into the information provided by the petitioner in the nomination paper under Rules 17 of the উপজেলা পরিষদ নির্বাচন বিধিমালা, ২০১৩ but did not find any cases pending for investigation in any Police Stations or pending for trial in any Courts against the present petitioner. The respondent No.5 also found that the petitioner was not a defaulter of Bank loan.

It further appears that on 25.04.2024 one Md. Kamal Hossain (Respondent No. 7) filed Election Appeal No. 01 of 2024 before the Respondent No.4 for cancellation of the nomination paper of the petitioner. The Appeal was admitted for hearing on 26.04.2024 and it was allowed by Respondent No. 4 on 28.04.2024. In allowing the same, Respondent No.4 observed that the petitioner was convicted for 5(five) years on 13.04.2011 in GR. No. 122 of 2005 by the Chief Judicial Magistrate, Moulovibazar which was subsequently affirmed by the learned Additional Sessions Judge, Moulovibazar in Criminal Appeal No. 34 of 2011 vide judgment and order dated 19.06.2011 and thus cancelled the nomination paper of the petitioner under section 8(2)(Gha) of the উপজেলা পরিষদ আইন, ১৯৯৮.

For correct appreciation of the matter in dispute, the impugned order is reproduced below in verbatim:

“আপীলকারী উপস্থিত। শুনানীতে আপীলকারী প্রতিদ্বন্দ্বী প্রার্থী জনাব মোঃ কামাল হোসেন নিয়োজিত বিজ্ঞ আইনজীবী জানান যে, প্রতিদ্বন্দ্বী প্রার্থী জনাব মোঃ তাজুল ইসলাম তাজ, পিতা-আব্দুল

গণি, মাতা-গোলে আমদান বেগম, সাকিন-জগন্নাথপুর, ডাকঘর, উপজেলা ও জেলা: মৌলভীবাজারের নির্বাচনী হলফনামার ২(খ) এ বর্ণিত জিআর ১২২/২০০৫ইং মোকদমায় বিজ্ঞ চীফ জুডিসিয়াল ম্যাজিস্ট্রেট আদালত কর্তৃক মোঃ তাজুল ইসলাম তাজকে ৫ বছরের সাজা প্রদান করা হয়। পরবর্তীতে জনাব মোঃ তাজুল ইসলাম তাজ ফৌজদারী আপিল মামলা ৩৪/২০১১ দায়ের করলে বিজ্ঞ অতিরিক্ত জেলা ও দায়রা জজ আদালতের ১৩/০৪/২০১১ তারিখের আদেশে বিজ্ঞ জুডিসিয়াল আদালত কর্তৃক প্রদত্ত রায় বহাল রাখেন। তৎপরবর্তীতে মহামান্য হাইকোর্ট বিভাগে ফৌজদারী রিভিশন নং-১০৪৬/২০১১ দায়ের করা হলে মোকদমাটির রমল শুনানীর জন্য অপেক্ষত অবস্থায় বর্তমানে বিচারাধীন। যেহেতু উক্ত ফৌজদারী রিভিশন নং-১০৪৬/২০১১ মামলায় জনাব মোঃ তাজুল ইসলাম তাজ এর সাজা স্থগিত করা হয়নি এবং তিনি একজন সাজাপ্রাপ্ত আসামী সেহেতু রিটার্নিং অফিসার কর্তৃক বৈধ ঘোষিত মনোনয়নপত্রটি বিজ্ঞ আইনজীবী বাতিলের প্রার্থনা করেন।

জনাব মোঃ তাজুল ইসলাম তাজ কর্তৃক নিয়োজিত বিজ্ঞ আইনজীবী রিটার্নিং অফিসার কর্তৃক বৈধ ঘোষিত মনোনয়নপত্রটি বহাল রাখার পক্ষে প্রয়োজনীয় কাগজপত্রসহ যুক্তি উপস্থাপন করেন। বিজ্ঞ আইনজীবী ১৫ জুন ২০১৫ খ্রি. তারিখে বাংলাদেশ সুপ্রীম কোর্টের হাইকোর্ট ডিভিশন (ক্রিমিনাল রিভিশনাল জুরিডিকশন) ক্রিমিনাল রিভিশন নং ১০৪৬/২০১১ এর আদেশের কপি দাখিল করেন। উক্ত আদেশে উল্লেখ রয়েছে- "Let the order of bail granted earlier by this Court be extended till disposal of the rule from date"। বিজ্ঞ আইনজীবী রিটার্নিং অফিসার কর্তৃক প্রদত্ত আদেশ অর্থাৎ জনাব মোঃ তাজুল ইসলাম তাজের মনোনয়নপত্র বৈধ ঘোষনার আদেশ বহাল রাখার প্রার্থনা করেন।

রিটার্নিং অফিসার কর্তৃক উপস্থাপিত মনোনয়নপত্র, সংযুক্ত কাগজপত্র, উভয়পক্ষের নিযুক্ত আইনজীবীর দাখিলকৃত কাগজপত্র দেখলাম। উভয়পক্ষের বিজ্ঞ আইনজীবীগণের বক্তব্য শুনলাম। উপজেলা পরিষদ নির্বাচন বিধিমালা, ২০১৩ এর বিধি ১৬, ১৭, ১৮ এবং ২০ এর বিধান পর্যালোচনা করলাম। রিটার্নিং অফিসার কর্তৃক দাখিলকৃত মনোনয়নপত্র পর্যালোচনায় দেখা যায়, প্রতিদ্বন্দ্বী প্রার্থী জনাব মোঃ তাজুল ইসলাম তাজ তাঁর মনোনয়নপত্রে মামলায় তথ্য উল্লেখ করলেও সাজার বিষয়ে কোন তথ্য উল্লেখ করেননি। জিআর ১২২/২০০৫ইং মোকদমায় বিজ্ঞ চীফ জুডিসিয়াল ম্যাজিস্ট্রেট কর্তৃক জনাব মোঃ তাজুল ইসলাম তাজকে ৫ বছরের সাজা প্রদান করা হয়েছে। পরবর্তীতে জনাব মোঃ তাজুল ইসলাম তাজ ফৌজদারী আপিল মামলা ৩৪/২০১১ দায়ের করলে বিজ্ঞ অতিরিক্ত জেলা ও দায়রা জজ ১৩/০৪/২০১১ তারিখের আদেশে সাজার রায় বহাল রাখেন। তৎপরবর্তীতে তিনি মহামান্য হাইকোর্ট বিভাগে ফৌজদারী রিভিশন নং- ১০৪৬/২০১১ দায়ের করলে মোকদমাটি বর্তমানে মহামান্য হাইকোর্ট বিভাগে অপেক্ষত অবস্থায় বিচারাধীন রয়েছে। রায় পর্যালোচনায় দেখা যায় অন্যায় মোঃ তাজুল ইসলাম তাজের শুধু জরিমানা স্থগিত করা হলেও সাজা স্থগিত করা হয়নি। উপজেলা পরিষদ আইন, ১৯৯৮ এর ৮(২)(ঘ) অনুসারে 'কোন নৈতিক স্থলনজনিত ফৌজদারী অপরাধে দোষী সাব্যস্ত হইয়া অন্যান্য দুই বৎসর কারা দণ্ডে দণ্ডিত হন এবং তাঁহার মুক্তি লাভের পাঁচ বৎসর অতিবাহিত না হইয়া থাকে তবে তিনি চেয়ারম্যান হওয়ার অযোগ্য হইবেন'। সার্বিক পর্যালোচনায় রিটার্নিং অফিসার কর্তৃক প্রদত্ত আদেশ হস্বক্ষিপযোগ্য।

অতএব, আদেশ হয় যে,

আদেশ

০১। আপীল আবেদন মঞ্জুর করা হলো।

০২। রিটার্নিং অফিসার কর্তৃক প্রতিদ্বন্দ্বী প্রার্থী জনাব মোঃ তাজুল ইসলাম তাজ, পিতা-আব্দুল গণি, মাতা-গোলে আমদান বেগম, সাকিন-জগন্নাথপুর, ডাকঘর, উপজেলা ও জেলা। মৌলভীবাজারের মনোনয়ন বৈধ ঘোষণা সংক্রান্ত আদেশ বাতিল করা হলো।

০৩। সংশ্লিষ্ট সকলকে অবহিত করা হোক।

স্বা/-

২৮.০৪.২০২৪

(ড. উর্বি বিনতে সালাম)

জেলা প্রশাসক, মৌলভীবাজার

আপীল কর্তৃপক্ষ

৬ষ্ঠ উপজেলা পরিষদ সাধারণ নির্বাচন ২০২৪

From the above it appears that though the Respondent No.7 under the law had no authority to file the above mentioned Election Appeal, inspite of that the Respondent No.4 had illegally admitted the same and finally allowed the appeal on the ground that the petitioner was convicted for 5(five) years in a criminal case which constituted '**moral turpitude**' and for the reason the nomination paper of the petitioner was cancelled.

In the case of *BREB v. BEREC* [29 BLC (AD) 1) the hon'ble Appellate Division held that the question of jurisdiction cannot be conferred to a court/ tribunal if it is found that the court tribunal has no jurisdiction to try the suit/case as the case may be.

It appears that the Respond No. 7 had illegally filed the Election Appeal and the Respondent No. 4 violating the provisions laid down in Rule 18 of the Bidhimala illegally admitted and disposed of the said appeal, in the circumstances taking into the *ratio* provided in the above mentioned reported case by our Apex Court, I am of the view that the order passed by the Respondent No. 4 on 28.04.2024 suffers from illegality. Actually the Respondent No.4 had

no jurisdiction to admit and disposed of the appeal filed by the Respondent No. 7.

On consideration of the case laws cited by the learned Advocate of the petitioner as well as the materials on record I am of the opinion that Election Appeal No. 01 of 2024 was preferred by a contesting candidate who does not have mandate to prefer an appeal under the law, as such, the appeal is void and *non-est*. Since the appeal was void, all subsequent proceedings including the impugned order passed by the Respondent No.4 appears to nullity and *void-ab-initio*.

I have carefully examined the provisions laid down in sections 8 and 13 of the উপজেলা পরিষদ আইন, ১৯৯৮. It appears that section 8 of the Ain prescribes qualifications and disqualifications of a candidate who wishes to contest in the Upazila Parishad Election. On the other hand, section 13 of the Ain deals with the manner and procedure of removal of the elected Chairman and Vice-Chairman etc. of the concerned Upazila

Sections 8 of the উপজেলা পরিষদ আইন, ১৯৯৮ runs thus:

- “৮। চেয়ারম্যান ও ভাইস চেয়ারম্যান যোগ্যতা ও অযোগ্যতা: (১) কোন ব্যক্তি উপ-ধারা (২) এর বিধান সাপেক্ষে, চেয়ারম্যান ও ভাইস চেয়ারম্যান নির্বাচিত হইবার যোগ্য হইবেন, যদি,
- (ক) তিনি বাংলাদেশের নাগরিক হন;
- (খ) তাঁহার বয়স পঁচিশ বৎসর পূর্ণ হয়; এবং
- (গ) তিনি ধারা ১৯ এ উল্লিখিত ভোটার তালিকাভুক্ত হন।
- (২) কোন ব্যক্তি চেয়ারম্যান ও ভাইস চেয়ারম্যান নির্বাচিত হইবার এবং থাকিবার যোগ্য হইবেন না, যদি তিনি-
- (ক) বাংলাদেশের নাগরিকত্ব পরিত্যাগ করেন বা হারান-
- (খ) কোন উপযুক্ত আদালত কর্তৃক অপ্রকৃতিস্থ বলিয়া ঘোষিত হন।

(গ) দেউলিয়া ঘোষিত হন এবং দেউলিয়া ঘোষিত হইবার পর দায় হইতে অব্যাহতি লাভ না করিয়া থাকেন।

(ঘ) কোন নৈতিক স্বলনজনিত ফৌজদারি অপরাধে দোষী সাব্যস্ত হইয়া অনূন দুই বৎসর কারাদণ্ডে দণ্ডিত হন এবং তাঁহার মুক্তি লাভের পর পাঁচ বৎসর অতিবাহিত না হইয়া থাকে।

(ঙ) প্রজাতন্ত্রের বা পরিষদের অন্য কোন স্থানীয় কর্তৃপক্ষের কোন লাভজনক পদে সার্বক্ষণিক অধিষ্ঠিত থাকেন।

(ত) বিগত পাঁচ বৎসরের মধ্যে যে কোন সময়ে দণ্ডবিধির ধারা ১৮৯, ১৯২, ২১৩, ৩৩২, ৩৩০ ও ৩৫৩ এর অধীন দোষী সাব্যস্ত হইয়া সাজাপ্রাপ্ত হন।"

On perusal of the provision of section 8 of the Ain it is evident that this section is applicable for determination of the qualifications and disqualifications of a candidate who wanted to compet in the upcoming Election. Section ৮(২)(ত) deals with Penal Code offences. The petitioner was convicted under section 392 of the Penal Code which is not incorporated in section ৮(২)(ত)of the Ain. As such, it appears that the petitioner was never convicted for an offence of moral turpitude.

Section 13 of the said Ain provides

"১৩। চেয়ারম্যান ইত্যাদির অপসারণ। (১) চেয়ারম্যান, ভাইস চেয়ারম্যান বা মহিলা সদস্যসহ যে কোন সদস্য তাঁহার স্বীয় পদ হইতে অপসারণযোগ্য হইবেন, যদি তিনি-

(ক) যুক্তিসঙ্গত কারণ ব্যতিরেকে পরিষদের পর পর তিনটি সভায় অনুপস্থিত থাকেন।

(খ) পরিষদ বা রাষ্ট্রের স্বার্থের হানিকর কোন কার্যকলাপে জড়িত থাকেন অথবা নৈতিক স্বলনজনিত অপরাধে আদালত কর্তৃক দণ্ডপ্রাপ্ত হন।

(গ) অসদাচারণ, দুর্নীতি বা ক্ষমতার অপব্যবহারের দায়ে দোষী সাব্যস্ত হন অথবা পরিষদের কোন অর্থ বা সম্পত্তির ক্ষতি সাধন বা উহার আত্মসাতের বা অপপ্রয়োগের জন্য দায়ী হন;

(ঘ) তাঁহার দায়িত্ব পালন করিতে অস্বীকার করেন অথবা শারীরিক বা মানসিক অসামর্থ্যের কারণে তাঁহার দায়িত্ব পালনে অক্ষম হন।

(ঙ) নির্বাচনের পর ধারা ৮(২) অনুযায়ী নির্বাচনের অযোগ্য ছিলেন মর্মে প্রমাণিত হন।

(চ) বার্ষিক ১২ (বার) টি মাসিক সভার মধ্যে নূনতম ৯ (নয়)টি সভায় গ্রহণযোগ্য কারণ ব্যতিরেকে যোগদান করিতে ব্যর্থ হন।

ব্যাখ্যা।-(অ) এই উপ-ধারায় বর্ণিত অসদাচারণ বলিতে ক্ষমতার অপব্যবহার, ধারা ১০ অনুযায়ী সম্পত্তি সম্পর্কিত ঘোষণা প্রদান না করা কিংবা অসত্য হলফনামা দাখিল করা, আইন ও

বিধির পরিপন্থী কার্যকলাপ, দুর্নীতি, অসদুপায়ে ব্যক্তিগত সুবিধা গ্রহণ, পক্ষপাতিত্ব, স্বজনপ্রীতি, ইচ্ছাকৃত অপশাসন, ইত্যাদি বুঝাইবে।

(আ) এই উপ-ধারায় বর্ণিত নৈতিক স্বলনজনিত অপরাধ বলিতে দণ্ডবিধিতে সংজ্ঞায়িত চাঁদাবাজি, চুরি, দস্যুতা, ডাকাতি, ছিনতাই, সম্পত্তি আত্মসাৎ, বিশ্বাস ভংগ, ধর্ষণ, হত্যা, খুন এবং Prevention of Corruption Act, 1947 (Act, 11 of 1947) সংজ্ঞায়িত- Criminal misconduct" ইত্যাদি বুঝাইবে।"

Section 13 of the Ain begin with the words "চেয়ারম্যান ইত্যাদির অপসারণ" which primarily gave meaning that after holding office of the Chairman etc. of the Upazila Parishad, a person could be removed from his office on the grounds stated therein.

In the instant case, the petitioner was yet to be elected as the Chairman of the concerned Upazila Parishad, rather he was willing to contest in the upcoming Election. Moreover, the meaning of 'moral turpitude' has not been incorporated in section 8 of the Ain rather in the said section some of the Penal Code offences had been mentioned which does not fall under the umbrella of 'moral turpitude'. Explanation annexed to section 13 of the Ain has given the definition of moral turpitude' which, in my view, should be taken into consideration at the time when a person be elected as the Chairman etc. of the concerned Upazila Parishad. Basically, section 8 of the Ain concentrated to determination of eligibility of a candidate while section 13 centred on removal of an elected representative of the Upazila Parishad. In another sense, section 8 deals with pre-election matter whereas section 13 centred on post election disputes.

Definition of 'moral turpitude' given in section 13 cannot be stretched to section 8 of the Ain to give a meaning for the purpose of section 8 thereof. In the case of *Abul Kashem v. Mahmudul Hasan*

[64 DLR (AD) 65] the Appellate Division held, "An 'Explanation' is, however, treated as part of the enactment and accordingly it should be read and construed with the section with which it is appended."

I have considered the submission made by the learned Attorney General as well as the contention raised by Mr. Probir Neogi, the learned Senior Advocate for the Respondent No. 7. On going through the judgment and order pronounced by the learned Chief Judicial Magistrate, Moulovibazar, in G.R. No. 122 of 2005 along with materials on record. It appears that though the petitioner was convicted under section 392 of the Penal Code but it is matter of concern that the informant of the said case was not examined by the trial Court. The seizure list witnesses were examined but they did not say a single word against the petitioner regarding his involvement in the alleged crime but only on the basis of the testimony of the Investigating Officer as well as other police personnel, the trial Court convicted the petitioner under section 392 of the Penal Code. In deciding Criminal Appeal No. 34 of 2011 this matter was also ignored by the learned Additional Sessions Judge, Moulovibazar. It further appears that being aggrieved by and dissatisfied with the judgment and order passed by the learned Additional Sessions Judge, Moulovibazar the petitioner filed Criminal Revision No. 1046 of 2011 which is pending in this Court.

The learned Attorney General contends that the instant petitioner in his online nomination paper gave false and fabricated statements about pending cases filed against him. He further submits

that the writ petitioner committed offence which was proved and accordingly has been convicted and sentenced for 5(five) years. Such deviation from the honesty and integrity shall be considered as moral turpitude and thus the Respondent No. 4 has rightly allowed the appeal and thereby set-aside the decision of the Respondent No. 5 - the learned Attorney General yoked. The learned Attorney General further contends that mere suspension of fine in criminal revision does not *ipsofacto* stayed the operation of the conviction and sentence awarded to the present petitioner and, as such, he is not eligible for contesting in the Election.

The learned Attorney General's main argument centred on the conviction of the petitioner. According to him, the petitioner was convicted for 'moral turpitude'. He did not say anything about the legal position of the Respondent No.7 in filing Election Appeal No. 01 of 2024. It has already observed that Respondent No.7 had filed the appeal violating the legal provisions laid down in Rule 18 of the Bidhimala. It is also decided that activities of Respondent No. 4 found void. In the circumstances, it appears that the impugned order is liable to be set aside.

Bearing the principles laid down in *Abul Kashem's* case, it is already been observed that section 8 of the Ain is silent in giving definition of the terms 'moral turpitude' and, as such, the submission made by the learned Attorney General in this respect bears no substance.

It is not necessary to discuss the fate of Criminal Revision No.1046 of 2011 filed by the present petitioner and its impact on his candidature but since all the contending parties made submission on this particular issue, in the circumstance I would like to add few words on it.

I have examined the nomination papers specially column Nos. 2.ka, 2.kha and 3.ka, 3.Kha of the same. It appears that in the appropriate columns the petitioners had furnished the detailed particulars of the respective cases. In some of the cases he was acquitted and in another he was discharged. He had been convicted in a case filed under section 392/411 of the Penal Code against which Criminal Revision No. 1046 of 2011 is pending. It has already been observed that in the said case the informant, a vital witness, was not testified and the seizure list witnesses were also failed to fasten the accused *i.e.* the present petitioner in committing the alleged offence.

It is on record that after scrutiny of the nomination papers as well as gathering knowledge from different sources, the Returning Officer (Respondent No. 5) found that the information provided by the petitioner therein appears to him correct and accordingly, he accepted the nomination paper. On going through the materials on record, it is evident that in Criminal Revision No. 1046 of 2011 the petitioner obtained bail. The fine was stayed by this Court. The said criminal revision is pending before this Court. It is not finally adjudicated. It is on record that being aggrieved by the order of conviction and sentence the petitioner preferred a criminal appeal

before the learned Session Judge, Moulavibazar. The appeal was eventually heard and disposed of by the learned Additional Sessions Judge, Moulavibazar. As I have been acquainted from the materials on record that in deciding the appeal, the lower appellate Court did not exercise its judicial mind in finding out the discrepancies which were available in the case records of the trial Court. The learned Additional Sessions Judge did not give his attention that in passing an order of conviction and sentence, the learned Chief Judicial Magistrate, Moulavibazar failed to record the evidence of the informant of the case. The seizure list witnesses were failed to implicate the accused (present petitioner) in this case, yet the trial Court convicted him and the appellate Court below without going through the record blindly affirmed the said judgment and order of conviction and sentence.

Appeal is the continuation of the original case. In our country, the provision of filing second appeal is not permitted. As such, an aggrieved party may prefer criminal revision against the order passed in first appeal. Criminal Revision No. 1046 of 2011 is not an exception to this general rule. It is yet to finalize. The matter is pending before this Court.

But without taking into consideration of these vital principles of law in mind, the Respondent No. 4 in the impugned order most arbitrarily observed that the petitioner is guilty of moral turpitude and thus illegally allowed the Election Appeal setting aside the order dated 23.04.2024 passed by the Respondent No.5. I have also perused

the case laws referred to by the learned Advocate of the petitioner and of the view that there is a strong *prima facie* case in favour of the present petitioner and, as such, the petitioner is entitled to get relief as prayed for.

In the result, the Rule is made absolute without any order as to costs.

The impugned order dated 28.04.2024 (Annexure-F) passed by the Respondent No.4 in Election Appeal No.01 of 2024 is set aside and those of the Respondent No.5 is restored.

The respondent Nos. 2-6 are directed to allocate Election Symbol in favour of the petitioner and to allow him to participate in the 6<sup>th</sup> Upazila Parishad General Election, 2024.

The public notice issued on 02.05.2024 by the Respondent No.5 declaring the Respondent No.7 elected treating him uncontested is hereby set aside.