

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), 6th 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), 6th 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, 6th 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 6th 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 6th 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.