

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

Writ Petition No. 6371 of 2009

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Abul Khair Md. Saifullah

...Petitioner

-Versus-

Government of the People's Republic of
Bangladesh, represented by the Secretary of
Ministry of Religious Affairs, Bangladesh
Secretariat, Ramna, Dhaka and others.

..... Respondents

Mr. Md. Tajul Islam, Advocate with

Mr. Omar Faruk, Advocate and

Mr. Md. Pervez Hosain, Advocate.

... For the petitioner.

Bench
Mr. Justice Sashanka Shekhar Sarkar
And

Mr. Justice A.K.M. Rabiul Hassan

Mr. Md. Syed Ejaz Kabir, D. A. G. with

Mr. Mohammad Mehdi Hasan, DAG

Mr. Mohammad Rashadul Hassan, AAG

Mr. Md. Shagar Hossain, AAG and

Mrs. Farhana Abedin, AAG

....For the respondents

Judgment on: The 4th March, 2025

Sashanka Shekhar Sarkar, J:

This *rule nisi* at the instant of the petitioner was issued on an
application under Article 102 of the Constitution in the following
terms;

Let a Rule Nisi be issued calling upon respondents to show cause as to why the action of the respondent No. 3 taken on 02.09.2009 in the so called general meeting of members of Kishoregonj Solakia Eidgah Math removing the petitioner as regular and permanent Imam of Solakia Eidgah Math and appointing respondent Nos. 9 and 10 in place of the petitioner shall not be declared to have been issued without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.

With the rule issued, the parties were directed to maintain status quo in respect of removing the petitioner and appointing the petitioner Nos. 9 and 10 as Imam as per decision taken by the respondent No. 3 on 02.09.2009.

Facts relevant for disposal of the rule, in short, are that the petitioner is an Islamic Scholar who has successfully completed all of his Institutional Educational including M.Phil from the University of Dhaka in the department of Islamic Studies in 2005. He having been appointed as Immam of Boro Bazar Jame Mosque, Kishoregonj has been functioning since 2003. The largest Eid congregation of Bangladesh at Solakia, Kishoregonj is an waqf Estate belonged to Dewan Mohammad Mannan Dad Khan Estate bearing registration No. E, C-11943 was executed and registered on 21.11.1950 being No. 7711. The grandson of Dewan Mohammad Mannan Dad Khan namely Fattah Dad Khan is the present Mutawalli of the waqf estate appointed

as per terms of deed of waqf by the Administrator on 05.02.1994. As per terms of deed of waqf, Mutawalli Md. Fattah Dad Khan had appointed Imam for conducting the Eid Jamat as well as the managing the affairs of waqf estate. The father of the petitioner Moulana Abul Khair Md. Nurullah, a renowned Islamic scholar was appointed “Imam” by the Mutawalli Md. Fatta Dad Khan and after his death, the petitioner was appointed Imam by him with the approval of several meetings of the executive committee of Solakia Eidgah Math on 20.10.2005, 29.05.2007 and lastly on 11.06.2007 giving him permanent appointment as Imam. The petitioner with the unanimous decision of the executive committee of Solakia Eidgah Math as well as with the consent of Mutwalli have been performing his function since his appointment as chief Imam for performing Eid prayer which holds twice in a year. During his functions as chief Imam as before, a letter was issued under the signature of the officer in-charge, General Branch, Kishoregonj, collectorat office inviting a meeting scheduled to be held on 03.08.2009 at 3.30 P.M. Subsequently, a notice was issued by additional District Commissioner(General), Kishoregonj, on 26.08.2009 inviting the members of the executive committee to be present on 02.09.2009 at 11 AM for attending a general meeting. The petitioner secretly came to know that the committee issued the said notice for holding a meeting for changing the chief Imam, then he made a representation to the Deputy Commissioner, Kishoregonj demanding explanations about his position but the Deputy

Commissioner, Kishoregonj without paying any heed upon the said representation appointed one Moulana Farid Uddin Masud as chief Imam which was reported in many Daily Newspapers of the country. Before appointing Moulana Farid Uddin Masud as chief Imam the petitioner was not issued any notice and the petitioner having informed through the national dailies made a representation to the Deputy Commissioner, Kishoregonj about the decision but that was also not responded and then the petitioner was constrained to file this writ petition challenging the decision of appointment of Moulana Farid Uddin Masud as chief Imam of Solakia Eid Jamat dated 02.09.2009 and obtained the instant rule.

During pendency of the rule, the petitioner filed a supplementary affidavit with the minutes of resolution that was taken by the committee on 02.09.2009 as Annexure-L. As early on 23.09.2007 by a decision of the committee, the petitioner was appointed as Imam of Solakia Eidgah Math for performing functions as Imam in Holy Eid-ul Fitar payer (Annexure:L-1). Subsequently, by a decision dated 16.09.2008 of the committee, the petitioner was appointed Imam (Annexure-M). The committee without notifying the petitioner, by a decision dated 12.03.2024 appointed Moulana Farid Uddin Masud as chief Imam to perform 197th Jamat of Solakia Eidgah Math (Annexure-N).

Mr. Md. Tajul Islam, the learned senior counsel along with Mr. Omar Faruq and Mr. Parvez Hossain the learned Advocates appearing

for the petitioner in supporting the rule submits that the Mutawalli of the waqf estate had earlier appointed the father of the petitioner, an Islamic scholar Moulana Abul Khair Md. Nurullah as chief Imam who, during his tenure, had performed as chief Imam with reputation and for his outstanding performance was awarded in several times and after his demise, his son, the petitioner, an Islamic scholar, was appointed as chief Imam of Solakia Eidgah Math and continued his function till the appointment of Moulana Farid Uddin Masud on 02.09.2009. Mr. Tajul Islam, further submits that the father of the petitioner who was previous chief Imam, died in 2006 and before his death, the petitioner was appointed as Imam because of illness of his father, the previous chief Imam. The petitioner being a lawfully appointed Imam, continued his function till 02.09.2009 but the respondent, without issuing any show-cause notice or without giving the petitioner any opportunity of being heard or without inviting him to the meeting whimsically took the impugned decision in appointing Moulana Farid Uddin Masud as chief Imam of Solakia Eidgah Math is complete violation of law and principle of natural justice.

Mr. Tajul Islam further submits that though the law allows the administrator to fix the minimum qualification and remuneration of Imam of mosque under waqf and if the administrator consider its necessity to appoint Imam of mosque under the waqf by removing any existing Imam if found the previous Imam unfit, unqualified and unsuitable but the decision dated 02.09.2009 appointing Moulana

Farid Uddin Masud as chief Imam removing the petitioner, the existing Imam by the respondents did not disclose any such disqualification of the petitioner, rather the respondents practically being politically biased appointed Moulana Farid Uddin Masud as chief Imam without formally removing the existing chief Imam, the petitioner and as such said decision being a gross violation of principle of natural justice as well against the terms of waqf and its spirit is liable to be declared illegal and without lawful authority.

The rule is opposed by the respondents however, without filing any affidavit in opposition. The learned Deputy Attorney General submits that the respondents did not commit any illegality in appointing another person as Imam for conducting Eid Jamat.

We have heard the learned counsels of both the sides, perused the writ petition, supplementary affidavits filed on several dates by the petitioner and all the annexures annexed therewith.

It appears that the deed of waqf was executed on 21.11.1950 specifically mentioning who would be Mutawalli of the waqf estate. It has also been mentioned in the deed of waqf that the waqif would be the first Mutawalli of the waqf estate i.e. Dewan Mohammad Mannan Dad Khan became the first Mutwalli of the estate and after demise, his first son as per terms of waqf deed became the next Mutawalli of the estate. In the said deed of waqf estate it was clearly specified that only the Mutawalli has the right to appoint the chief Imam of Eidgah Math for performing two Eid prayers in a calendar year.

For better understanding and appreciation the particular assertion in the deed of waqf itself is quoted below;

“আমার জীবিত কালের যাবত মধ্যে উক্ত ওয়াকফ সম্পত্তির মোতয়ালী আমি। আমার অভাব হইলে তৎকালিন পুত্রদের মধ্যে জ্যেষ্ঠ পুত্র মোতয়ালী নিযুক্ত হইবে। এবং তাহার অভাব হইলে তাহার তৎকালিন পুত্রদের মধ্যে জ্যেষ্ঠ পুত্র মোতয়ালী নিযুক্ত হইবে এবং এইরূপে ক্রমিক জ্যেষ্ঠ পুত্র এবং তাহার অভাবে তাহার জ্যেষ্ঠ পুত্র পুরুষানুক্রমে মোতয়ালী নিযুক্ত হইবে।”

In the said deed of waqf the appointment of Imam has been mentioned to the effect that “ঈদগাহে বৎসরে দুইদিন ঈদের নামাজ পাঠ হইবে। তাহাতে তৎকালীন মোতাওয়ালী ইমাম নিযুক্ত করিবেন।”

The facts remains that Dewan Mohammad Mannan Dad Khan being waqif as per terms of deed of waqf himself was appointed as 1st Mutawalli of the waqf estate. After his demise, as per term of waqf deed, his first son Dewan Mohammad Sattar Dad Khan was appointed Mutawalli and lastly after the demise of Mohammad Sattar Dad Khan his first son Dewan Mohammad Fatta Dad Khan was appointed Mutawalli of the waqf estate on 05.02.1994 as evident in annexure-A(1). The executive committee of Solakia Eidgah Math by a decision dated 24.10.2004 had appointed Hajarat Moulana Abul Khair Md. Nurullah as chief Imam and his son the present petitioner Hajarat Moulana Abul Khair Md. Saifullah as next Imam evident as Annexure-B. The Mutawalli Dewan Md. Fattah Dad Khan by a letter dated 19.01.2004 appointed the petitioner as Imam because of his father’s illness evident as Annexure-C.

For better understanding and appreciation the said appointment letter is quoted below;

বরাবর
জেলা প্রশাসক
কিশোরগঞ্জ
ও
সভাপতি
শোলাকিয়া ঈদগাহ মাঠ পরিচালনা কমিটি।

বিষয়ঃ শোলাকিয়া ঈদগাহ মাঠে ঈদুল আযহা/০৪ জামাতের ইমাম নিয়োগ প্রসঙ্গে।

জনাব,

শোলাকিয়া ঈদগাহ মাঠে ঈদুল আযহা ২০০৪ জামাতে ইমামের দায়িত্ব পালনের জন্য মাওলানা আবুল খায়ের মোঃ সাইফুল্লাহ সাহেবকে নিয়োগ প্রদান করিলাম। উল্লেখ্য শোলাকিয়া ঈদগাহ মাঠের ইমাম সর্বজন প্রদ্বৈয় হযরত মাওলানা আবুল খায়ের মোঃ নুরুল্লাহ সাহেব অসুস্থ বিধায় আমাকে এ সিদ্ধান্ত নিতে হয়েছে।

অতএব, এ বিষয়ে মহোদয়কে প্রয়োজনীয় ব্যবস্থা নেওয়ার জন্য অনুরোধ করিতেছি।

তারিখঃ ১৯/০১/০৪ইং

বিনীত

দেওয়ান ফাত্তাহ দাদ খান

মোতওয়াল্লী

শোলাকিয়া ঈদগাহ মাঠ

কিশোরগঞ্জ।

The executive committee of Solakia Eidgah Math by a decision of its meeting dated 20.10.2005 requested the petitioner to perform as Imam of Eid-ul Fitar-2005 at Solakia Eidgah Math evident as Annexure-C(1).

For better understanding and appreciation the particular portion of the decision requesting the petitioner to perform chief Imam is quoted below;

(ক) ঐতিহাসিক শোলাকিয়া ঈদগাহ মাঠের জামাতে ইতোপূর্বে একাধিকবার সার্থকভাবে ইমামের দায়িত্ব পালনকারী কিশোরগঞ্জ বড় বাজার জামে মসজিদের খতিব হযরত মাওলানা মুফতি আবুল খায়ের মোঃ সাইফুল্লাহ সাহেব পবিত্র ঈদ-উল ফিতর/২০০৫ এর পবিত্র ঈদের জামাতে ইমামের দায়িত্ব পালন করবেন এবং এ বিষয়ে তাঁকে প্রস্তুত থাকার জন্য অনুরোধ করা হয়।

The executive committee of Solakia Eidgah Math by a decision dated 29.05.2007 decided to give appointment the petitioner as chief Imam permanently.

For better understanding and appreciation the particular portion of decision is quoted below.

সিদ্ধান্ত-২ঃ মোতওয়াল্লী এবং কার্যকরী কমিটির সিদ্ধান্তে অদ্য হতে হযরত মাওলানা মুফতি আবুল খায়ের মোঃ ছাইফুল্লাহ যতদিন সক্ষম থাকবেন ততদিন পর্যন্ত নিয়মিত এবং স্থায়ী ইমাম হিসাবে শোলাকিয়া ঈদগাহ মাঠে অনুষ্ঠিত প্রতিটি ঈদের জামায়াতে ইমামের দায়িত্ব পালন করবেন। সিদ্ধান্তের বিষয়টি সংশ্লিষ্টদের অবহিত করতে শোলাকিয়া ঈদগাহ মাঠ কার্যকরী কমিটির সভাপতি, সম্পাদক, মোতওয়াল্লীর যৌথ স্বাক্ষরে পত্র প্রেরনের জন্য সিদ্ধান্ত গৃহিত হয়।

The executive committee of Solakia Eidgah Math informed the said decision of appointment of permanent Imam to the petitioner and that was communicated by a letter dated 11.07.2007 evident as Annexure: D-1 and accordingly the petitioner joined by submitting a formal joining letter to the executive committee on 13.06.2007 evident as Annexure-D(2). The petitioner having joined as permanent Imam performed with well reputation. As a result of which the

committee also by a decision dated 23.09.2007 requested the petitioner to perform as chief Imam for holy Eid-ul Fitar, 2007.

For better understanding and appreciation the said decision is quoted below.

ঐতিহাসিক শোলাকিয়া ঈদগাহ মাঠের ইতোপূর্বে একাধিকবার সার্থকভাবে ইমামের দায়িত্ব পালনকারী কিশোরগঞ্জ বড় বাজার জামে মসজিদের খতিব ঐতিহাসিক শোলাকিয়া ঈদগাহের নিয়মিত ইমাম হযরত মাওলানা মুফতি আবুল খায়ের মোঃ সাইফুল্লাহ (ট্রিপল টাইটেল এম, এ) সাহেব পবিত্র ঈদ-উল ফিতর/২০০৭ এর পবিত্র ঈদের জামাতে ইমামের দায়িত্ব পালন করবেন এবং এ বিষয়ে তাঁকে প্রস্তুত থাকার জন্য অনুরোধ করা হয়।

The executive committee of Solakia Eidgah Math also by their decision dated 16.09.2008 requested the petitioner to perform as chief Imam of Holy Eidul Fitar, 2008.

For better understanding and appreciation the said decision is quoted below;

শোলাকিয়া ঈদগাহ মাঠে পবিত্র ঈদ-উল ফিতর/০৮ এর ঈদের জামাত পরিচালনা করার জন্য গত বছরের ন্যায় বড় বাজার জামে মসজিদের খতিব প্রদ্বয়ে ইমাম মুফতী আবুল খায়ের মোঃ ছাইফুল্লাহকে অনুরোধ করা হয়।

The above backdrops as has been elaborately reflects that the petitioner was appointed a permanent chief Imam of Solakia Eidgah Math for performing of both the Eid prayer of every year. During his performance till 02.09.2009 nobody nowhere even from no corner any allegation was brought against him or no allegation of his

incompetency, incapability or other disqualification brought by the authority i.e. executive committee against him.

It further reveals that the petitioner's father was appointed as chief Imam by the existing Mutawalli Dewan Md. Fattah Dad Khan and after his death the said Mutawalli who is still alive also appointed the petitioner for the first time in absence of his father as Mutawalli and by the decision dated 29.05.2007 was appointed as permanent chief Imam till his capability exist. It further appears from the entire case record that nobody, no institute, no authority or even the executive committee did not raise any question regarding his incapability to perform as chief Imam of Solakia Eidgah Math to perform two Eid Jamat in a year.

It appears that the respondents without issuing any notice to the petitioner or without giving any opportunity of being heard him, the respondents straight way by a decision dated 02.09.2009 appointed Moulana Farid Uddin Masud as chief Imam to perform 182nd Eid Jamat. The petitioner by submitting representation asked for explanation for the said appointment that was published in so many daily newspapers. The petitioner was not informed the said decision by intimating any formal letter even did not reply the explanation asked for to the committee and then the petitioner being seriously affected and injured with the sudden decision of the respondents filed this writ petition. The respondents though oppose the rule but since has not controverted the submission, statement of the writ petitioner

be deemed not denied. Under the above backdrop we have to settle the following issues.

- (1) Whether the petitioner was lawfully appointed as chief Imam of Solakia Eidgah Math by the Mutawalli with the unanimous decision of the executive committee?

To settle above issue we have meticulously perused the annexures of the writ petition and supplementary affidavit. Annexure A is the deed of waqf, very specifically mentioned who will give appointment the chief Imam of Solakia Eidgah Math. There, it was mentioned that the existing Mutawalli have the absolute authority to give appointment of chief Imam. The said appointment as chief Imam was confirmed with the decision dated 20.10.2005, 29.05.2007 which was informed to the petitioner by a letter dated 11.06.2007 by the committee and with the letter of joining of the petitioner dated 13.06.2007 (Annexure: D, D-1 and D-2). The petitioner's appointment as chief Imam was materially effective from 13.06.2007 on his joining formally (Annexure: D-2). So the petitioner lawfully by both Mutawalli as well as by the executive committee was appointed as chief Imam.

- (2) Whether being an Imam of Soakia Eidgah Math, any authority, any person or any institution had brought any allegation of disqualification against him.

We have very meticulously perused all the documents of the writ petition and find that there was not a single *iota* of any allegation

or evidence of allegation brought against the petitioner disqualifying him to perform as chief Imam of Eid Jamat.

(3) Whether the petitioner being a permanent Mutawalli was show caused before taking the impugned decision and removing from his post of chief Imam?

On meticulous perusal of all the annexures and documents to the writ petition we find that not a single letter was issued to the petitioner showing cause and to give him any opportunity to depend that he is not qualified to continue as a chief Imam of Solakia Eidgah Math.

(4) Whether when the petitioner was not found incapable, unqualified and other misconduct or any fault during his performance as chief Imam, the appointment of Moulana Farid Uddin Masud in place of him was lawful?

Practically the last one is the key issue to be settled in this particular writ petition. As we have elaborately already observed that the petitioner is an Islamic Scholar and well reputed person, well named and famed in country as well as abroad and his father also was a renowned Islamic scholar who performed as chief Imam at Solakia Eidgah Math and during their tenure nobody from any corner brought any allegation of disqualification or their incapability to continue performance as Imam but all on a sudden without giving any notice or giving any chance to depend himself issued the impugned decision on 02.09.2009 that has been challenged by this writ petition to what

extends was legal. Waqf is a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by Muslim Law as pious, religious or charitable and includes any other endowment or grant for the aforesaid purposes. The grandfather of the Mutawalli named Dewan Mohammad Mannan Dad Khan created the waqf estate by executing a waqf deed describing the objectives and purposes of the waqif. There the authority and procedure of appointing Imam was mentioned. The deed of waqf itself speaks about the appointment of Imam of the waqf mosque. The waqf deed itself has made clear the objectives of the waqif. So in that regard it is required to explain what is waqf deed?. Waqf deed means any deed or any instruments by which a waqf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication has been varied. The maker of waqf is called waqif so, Dewan Mohammad Mannan Dad Khan Waqf Estate was created by Mannan Dad Khan himself as waqif and the waqif desire is the supreme desire to be executed by the beneficiary of waqf estate. The waqif himself declared in his deed of waqf that all the eldest sons by genealogically would be the Mutawalli and the Mutawalli will take decision who would be the Imam. So the desire of waqif that he expressed in the deed of waqf should be implemented. The waqif's desire is the finality since in this particular case, the Mutawalli was given authority to appoint Imam and the present Mutawalli Dewan Mohammad Fattah Dad Khan himself had

appointed the petitioner as chief Imam which was endorsed by the executive committee of Solakia Eidhag Math will continue until and unless any disqualification or any sort of disqualification or misconduct is detected or established. The decision in appointing others in place of existing Imam going beyond the spirit of waqf deed itself as well as the long standing practice that was time to time done by the Mutawalli with the approval of the executive committee should not be considered legal i.e. the decision dated 02.09.2009 taken by the respondent without showing any cause to the permanently appointed chief Imam or giving him any opportunity of being heard or showing any disqualification and incapability should be construed as illegal.

Lastly in course of hearing of the matter the court upon a curiosity wanted to know whether the present Mutawalli is alive and to satisfy the court, the petitioner by an affidavit submitted the certificate issued by the concern authorities certifying that he is alive so the Mutawalli who was appointed by court with the spirit of deed of waqf as well as under a formal decision of the administration of waqf that was held on 05.02.1994 i.e. Dewan Mohammad Fattah Dad Khan the present Mutawalli having been appointed still functioning as Mutawalli and since the deed of waqf itself has given him the absolute power to appoint chief Imam he did it and that was endorsed as finality by the Administrator of waqf. So finally we are of the view that the petitioner was appointed as chief Imam of Solakia Eidgah Math permanently by following both the spirit of waqf deed and

official process. So the appointment of the petitioner as chief Imam by the Mutawalli having endorsed with the committee in accordance with law should not be thrown away by appointing Moulana Fariduddin Masud as chief Imam. The appointment of chief Imam vide order dated 02.09.2009 was done not only going beyond the spirit of waqf deed but also beyond the scope of law.

Section 70 of Waqf Ordinance provides that the Administrator by a general or special order fix the minimum qualification and remuneration of the Imam of mosque under the waqf. The Administrator may, if he considers it necessary, himself appoint the Imam under the waqf by removing an existing Imam if he is considered unfit, disqualified or unsuitable i.e. section 70 of the waqf ordinance has given the power to the administrator to fix the quantity of qualification and remuneration and also has given power to appoint Imam if it feels necessary removing the existing Imam. Only when the existing Imam is unfit, unqualified or unsuitable. In respect of decision dated 02.09.2009 in appointing Moulana Farid Uddin Masud as chief Imam in place of the petitioner no such allegation of unfitness, unqualifiedness and unsuitability was agitated against. Such unqualifiedness, unfitness and unsuitability are the impediments to continue the office of an existing Imam and such preconditions for being removed requires to be shown by cause and giving opportunity of being heard but not a single of those was done by the respondents in taking the impugned decision. It is very crystal clear from the

impugned order itself that Moulana Farid Uddin Masud was simply appointed as chief Imam but that was done due to unfitness, unqualifidness of the present imam but there remains no such term of unsuitability of the existing Imam, he was given appointment without following even the existing law and tradition. So on considering the facts and circumstances, relevant the documents and existing laws, so we are of the view that the appointment of respondent No. 9 and 10 as chief Imam and Imam vide order dated 02.09.2009 by the respondent No. 3 was on complete violation of the laws as well as by violation of long standing tradition that had been continued with the father of the petitioner and himself and as such we find merit in the rule.

In the result, the rule is made absolute.

The decision dated 02.09.2009 appointing the respondent No. 9 and 10 as chief Imam and Imam is hereby declared illegal, without lawful authority and is of no legal effect.

However, there shall be no order as to costs.

Communicate the judgment and order, at once.

AKM Rabiul Hassan, J:

I agree.

Md. Imam Hossain
Bench officer.