

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

WRIT PETITION NO. 609 of 2022

IN THE MATTER OF:

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

IN THE MATTER OF:

Md. Rafiqul Islam

..... Petitioner.

-Versus-

The Government of Bangladesh, represented by Secretary, Ministry of Liberation War Affairs and others

..... Respondents

Mr. A.K.M. Fazlul Hoque, Advocate

..... For the petitioner.

Mr. Mohammad Mohsin Kabir, DAG with

Mr. A.K.M. Rezaul Karim Khandaker, D.A.G

Ms. Shahin Sultana, AAG with

Mr. Md. Manowarul Islam, A.A.G and

Mr. Md. Mokhlesur Rahman Babu, A.A.G

..... For the respondents.

Judgment on: 18.11.2025.

Present:

Mr. Justice Sheikh Abdul Awal

And

Mr. Justice S.M. Iftekhar Uddin Mahamud

S.M. Iftekhar Uddin Mahamud, J.

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, this Rule was issued on 18.01.2022 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned decision contained in letter being memo No.48.02.0000.001.31.051.12.201 dated 05.03.2020 issued under signature of the respondent No. 4 to cancel gazette and provisional certificate of the petitioner as freedom fighter (Annexure-E) should not be declared as without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts, stated in the writ petition, in short, are that the petitioner is the valiant freedom fighter of the Liberation War, 1971 who participated in the liberation war to fight for the country. The name of the petitioner was published in the “Mukti Barta” (Red Book) as Freedom Fighter being serial No. 0204120415 and he obtained the provisional certificate issued by the respondents. On 18.11.2004 the petitioner’s name was published in the Gazette Notification by the respondent No.1 showing the name of the petitioner as Freedom Fighter at serial No.3066 and the petitioner was receiving the allowance as Freedom Fighter from 01.06.2017 till November 2019. After a complaint was filed by one stranger named, Anu Miah Khandker son of late Abdul Mannan Khandaker, the petitioner received a notice being memo No.48.02.0000.003.06.011.18.458 dated 05.11.2019 issued by the Respondent No.5. to appear on 05.12.2019 in the conference room of Jatiyo Muktijoddha Council for hearing on allegation regarding veracity

of his becoming Freedom Fighter and to investigate the allegation (by JAMUKA) and that the petitioner appeared before them and gave his statement and submitted documents. Thereafter a scrutiny committee (Jachai Bachai Committee) was formed comprising of 4 members. However, after scrutiny the said 4 members committee could not come to a unanimous decision regarding the status of petitioner as freedom fighter and passed a bifurcated decision of the said committee which was signed on 02.02.2021. Subsequently, an investigation was held only by the respondent No.3 (Chairman, JAMUKA) instead of respondent No.2, JAMUKA, illegally resolving the matter in its 67th meeting held on 12.02.2020 being Memo No. 48.02.0000.001.31.051.12.201 dated 05.03.2020 signed by its Director General to the Secretary, Ministry of Liberation War Affairs to cancel the Gazette and Provisional Certificate as freedom fighter of the petitioner. Meanwhile, the petitioner filed an appeal dated 04.03.2020 challenging the decision of JAMUKA to stop the allowance of the petitioner.

Being aggrieved by the aforesaid impugned decision made by JAMUKA in its 67th meeting held on 12.02.2020 being Memo No. 48.02.0000.001.31.051.12.201 dated 05.03.2020 signed by its Director General to the Secretary, Ministry of Liberation War Affairs to cancel the Gazette and Provisional Certificate, finding no other alternative efficacious remedy the petitioner field this writ petition before this Court and obtained the present Rule.

Mr. A.K.M. Fazlul Hoque, the learned advocate appearing for the petitioner submits that the petitioner is a genuine freedom fighter and his

name was published in the Gazette Notification dated 18.11.2004 at serial No.3066 and was also published in the “Mukti Barta” (Red Book) as Freedom Fighter being serial No.0204120415. He also submits that the petitioner was receiving the allowance as Freedom Fighter from 01.06.2017 till November 2019 and suddenly a complaint was made by a stranger namely, Anu Miah Khandaker son of late Abdul Mannan Khandaker and then the petitioner received a notice being memo No. 48.02.0000.003.06.011.18.458 dated 05.11.2019 issued by the Respondent No.5. to appear on 05.12.2019 in the conference room of Jatiyo Muktijoddha Council for hearing on allegation regarding veracity of his becoming Freedom Fighter and the said allegation to be investigated by the respondent No.2 (JAMUKA) and that the petitioner appeared before them and gave his statement with documents.

That thereafter a scrutiny committee (Jachai Bachai Committee) was formed comprising of 4 members, where the President of that committee was selected by the Chairman of JAMUKA, Upazilla Nirbahi Officer was the member Secretary of the committee while the other two members were selected by the Member of Parliament and Deputy Commissioner. However, after scrutiny the said 4 members of Jachai Bachai committee could not come to a unanimous decision and the bifurcated decision of the said committee was signed on 02.02.2021. Subsequently the investigation being conducted only by the respondent No.3 (Chairman of JAMUKA) and on the basis of alleged investigation the respondent No.2, JAMUKA most illegally resolved the matter in its 67th meeting held on 12.02.2020 being Memo

No.48.02.0000.001.31.051.12.201 dated 05.03.2020 signed by its Director General to the Secretary, Ministry of Liberation War Affairs to cancel the Gazette and Provisional Certificate without any proper investigation and without considering the dissented decision of the 4 member scrutiny committee.

The learned Advocate for the petitioner further submits that as per section 7(Jha) of the জাতীয় মুক্তিযোদ্ধা কাউন্সিল আইন, ২০০২ only the Council consisting of the nine members as prescribed under section 6 can take steps to enlist the real Freedom Fighters and after an investigation by it, considering the investigation report the Council only can identify and recommend the Government to cancel the fake certificates. But in this case the Respondent No.3 alone investigated the matter and not appropriately by the Scrutiny Committee or else by JAMUKA which is colourable exercise of power by the respondent No.3, Chairman of JAMUKA.

He also submits that Article 27 of the Constitution of Bangladesh has ensured equality before law and Article 31 ensured the right to protection of law and to be treated in accordance with law. But in this case, the respondents ignoring the said fundamental rights as guaranteed by the Constitution has arbitrarily decided to cancel the petitioner's freedom fighter status on the basis of recommendation of the Chairman ignoring report of the Scrutiny Committee. He also submits that the allegation brought against the petitioner in the impugned letter is baseless, *malafide* and arbitrary.

The learned Advocate for the petitioner finally submits that the respondent No.3 (Chairman of Jamuca) and respondent No.2, JAMUKA most illegally resolved the matter in its 67th meeting held on 12.02.2020 being Memo No.48.02.0000.001.31.051.12.201 dated 05.03.2020 signed by its Director General to the Secretary, Ministry of Liberation War Affairs to cancel the Gazette and Provisional Certificate without any proper investigation and without considering the dissented decision of the 4 member scrutiny committee. The petitioner was receiving the State honorarium since 01.06.2017 and that respondents stopped the State honorarium from November 2019 without showing any cogent reason, thus the impugned decision is liable to be declared to have been passed without any lawful authority and is of no legal effect and as such, the petitioner prayed for making the Rule absolute.

Mr. Mohammad Mohsin Kabir, the learned Deputy Attorney General by filing an affidavit-in-opposition appeared on behalf of the respondent No.1 to oppose the Rule. He submits that the respondent No.2, JAMUKA resolved the matter in its 67th meeting held on 12.02.2020 being Memo No.48.02.0000.001.31.051.12.201 dated 05.03.2020 which is sustainable in law. He further submits that the appeal dated 04.03.2020 filed by the petitioner has been disallowed by the respondent No.2 on 03.11.2025. However he finds it difficult to oppose the Rule on the grounds upon which this Rule was obtained.

We have heard the submissions of the learned Advocate for the petitioner and the learned Deputy Attorney General and perused the application and the annexures annexed thereto.

It transpires from the record that the petitioner's name was published in the "Mukti Barta" (Red Book) as Freedom Fighter being serial No.0204120415 and the petitioner obtained the provisional certificate issued by the respondents and subsequently the name of the petitioner had been published in the Gazette dated 18.11.2004 at serial No.3066 and that the petitioner has been enjoying the status of freedom fighter since 2004 including the monthly allowance from 01.06.2017 to November 2019.

To address the issues raised by the writ petitioner, let us examine the relevant provisions of law, in particular, Section 6(1)(ka)(Kha) and Section 7(Jha) of the Jatio Muktijodda Council Ain 2002. That Section 6(1)(ka)(kha) of the Ain 2002 provides-

“ ৬। (১) এই আইনের উদ্দেশ্যপূরণকল্পে নিম্নবর্ণিত নয় সদস্য সমন্বয়ে কাউন্সিল গঠিত হইবে, যথা-

(ক) মুক্তিযুদ্ধ বিষয়ক মন্ত্রণালয়ের দায়িত্বপ্রাপ্ত মন্ত্রী বা প্রতিমন্ত্রী, যিনি ইহার চেয়ারম্যানও হইবেন;

(খ) মুক্তিযুদ্ধের ব্রিগেড কমান্ডার, সেক্টর কমান্ডার, সাব-সেক্টর কমান্ডার অথবা উল্লিখিত কমান্ডসমূহের বিশিষ্ট মুক্তিযোদ্ধা বা মুক্তিযুদ্ধ বিষয়ক কর্মকাণ্ডের সহিত সংশ্লিষ্টদের মধ্য হইতে আটজন ব্যক্তি, যাঁহারা প্রধান উপদেষ্টা কর্তৃক মনোনীত হইবেন।”

(২).....

And Section 7(Jha) of the said Act, 2002 provides-

(৭) কাউন্সিলের কার্যাবলী- কাউন্সিলের কার্যাবলী হইবে নিম্নরূপ, যথাঃ-

(ক).....

(খ).....

“ (ঝ) প্রকৃত মুক্তিযোদ্ধাদের তালিকা প্রণয়ন, সনদপত্র ও প্রত্যয়নপত্র প্রদানে এবং জাল ও ভূয়া সনদপত্র ও প্রত্যয়নপত্র বাতিলের জন্য সরকারের নিকট সুপারিশ প্রেরণ”

That section 6(1) stipulates that the Council will be comprised of 9 members while section 7(Jha) stipulates that Council will recommend the government in preparing and issuing list of true freedom fighters, certificates and attestation and will also recommend for cancelling the false and fabricated certificates. So the Council i.e.; respondent no.2 has been entrusted with the obligation to enlist the name of freedom fighters, certify, attest and to recommend the government for cancellation of fabricated and fake certificates and thus the respondent No.2 (JAMUKA) is empowered to assess and enquire as to the authenticity of the certificates and status of freedom fighters.

Further, Annexure C of this petition provides as follows:

“ গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জাতীয় মুক্তিযোদ্ধা কাউন্সিল
জাতীয় স্কাউট ভবন (১২ ও ১৩ তলা),
৬০, আঞ্জুমান মুফিদুল ইসলাম সড়ক
কাকরাইল, ঢাকা-১০০০।
www.jamuka.gov.bd

স্মারক নংঃ-৪৮.০২.০০০০.০০৩.০৬.০১১.১৮.৪৫৮

তারিখঃ ২০ কার্তিক, ১৪২৬, বঃ
০৫ নভেম্বর, ২০১৯ খ্রিঃ

অভিযোগের বিষয়ে তদন্তের নোটিশ

এত দ্বারা জানানো যাচ্ছে যে, আনু মিয়া খন্দকার, পিতাঃ মৃতঃ আব্দুল মান্নান খন্দকার, গ্রামঃ চান্দেচর, ডাকঘরঃ চান্দেচর, উপজেলাঃ শাহরাস্তি, জেলাঃ চাঁদপুর কর্তৃক জনাব মোঃ রফিকুল ইসলাম, পিতাঃ মৃতঃ দুধ মিয়া চৌধুরী, গ্রামঃ ছয়ফুল্লাকান্দি, ডাকঘরঃ মাথাভাঙ্গা, উপজেলাঃ হোমনা, জেলাঃ কুমিল্লাসহ ০৪ (চার) জনের বিরুদ্ধে অমুক্তিযোদ্ধার অভিযোগ আনয়ন করা হয়। উক্ত অভিযোগের বিষয়ে আগামী ০৫/১২/২০১৯ তারিখ সকাল ১০.০০ ঘটিকায় জাতীয় মুক্তিযোদ্ধা কাউন্সিলের সম্মেলন কক্ষে জামুকা কর্তৃক তদন্ত করা হবে।

বর্ণিতাবস্থায়, আগামী ০৫/১২/২০১৯ তারিখ সকাল ১০.০০ ঘটিকায় জাতীয় মুক্তিযোদ্ধা কাউন্সিলের সম্মেলন কক্ষে (জাতীয় স্কাউট ভবন, ১২ তলা, ৬০, আঞ্জুমান মুফিদুল ইসলাম সড়ক, কাকরাইল, ঢাকা) অভিযোগকারী এবং অভিযুক্তকে তাঁদের স্বপক্ষে যাবতীয় সাক্ষ্য ও দালিলিক প্রমাণাদিসহ উপস্থিত হয়ে তদন্ত কার্যে অংশগ্রহণের জন্য নির্দেশক্রমে অনুরোধ করা হল।

(মোঃ আব্দুল খালেক)
সহকারী পরিচালক
(রেজিস্ট্রেশন ও সার্টিফিকেট)
ফোনঃ ৪৮৩২১৫৮৬

ই-মেইলঃ ad.reg@jamuka.gov.bd ”

Annexure C clearly shows that respondent no.5 issued the notice dated 05.11.2019 to the petitioner informing that the investigation into the matter of his status of freedom fighter would be conducted by the respondent no.2, Jamuka.

That Annexure E of the instant writ petition illustrates as follows:

“ গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জাতীয় মুক্তিযোদ্ধা কাউন্সিল
প্রশাসন-১ শাখা
জাতীয় স্কাউট ভবন (১২ ও ১৩ তম তলা),
৬০, আজুমান মুফিদুল ইসলাম সড়ক, কাকরাইল, ঢাকা-১০০০।
www.jamuka.gov.bd

স্মারক নংঃ-৪৮.০২.০০০০.০০১.৩১.০৫১.১২.২০১

তারিখঃ ২১ ফাল্গুন, ১৪২৬,
০৫ মার্চ, ২০২০ খ্রিঃ

বিষয়ঃ চেয়ারম্যান, জাতীয় মুক্তিযোদ্ধা কাউন্সিল কর্তৃক তদন্তকৃত অভিযোগের উপর সুপারিশ বিষয়ে আলোচনা ও সিদ্ধান্ত।

সূত্রঃ জাতীয় মুক্তিযোদ্ধা কাউন্সিলের ৬৭তম সভার ৯.০১ আলোচ্যসূচীর সুপারিশ/সিদ্ধান্ত।

উপর্যুক্ত বিষয়ে জানানো যাচ্ছে যে, জাতীয় মুক্তিযোদ্ধা কাউন্সিলের ৬৭তম সভার ০৯.০১ নং আলোচ্যসূচীতে জাতীয় মুক্তিযোদ্ধা কাউন্সিল এর মাননীয় চেয়ারম্যান কর্তৃক তদন্তপূর্বক গেজেট, সনদ ও লাল মুক্তিবর্তা বাতিলের জন্য সুপারিশকৃত ৪৯ জন ব্যক্তির তথ্য উপস্থাপন করা হয়। সভায় নিম্নবর্ণিত ৪৯ জনের গেজেট, সনদ ও লাল মুক্তিবর্তা বাতিলের সুপারিশ করার সিদ্ধান্ত গৃহীত হয়ঃ ”

Annexure E of writ petition shows that Respondent No.3 (Chairman, JAMUKA) alone conducted the investigation as to the veracity of the certificates of the petitioner (Serial No.8) and accordingly respondent No.2 recommended to cancel the gazette and certificates of petitioner. However, the notice dated 05.11.2019(Annexure C) issued by respondent no.5 and provisions under section 6(1) and 7 (Jha) of the said

Ain, 2002 as stated above entail that the said investigation of petitioner's status of freedom fighter ought to be conducted by the Jatiio Muktijodda Council (i.e; respondent No.2) and not by the Chairman (i.e; respondent No.3) and thus the investigation held by the respondent No.3 is beyond the scope of law and is of no legal effect.

That in addition, the report dated 02.02.2021 of scrutiny committee (jachai bachai committee, formed in accordance with law i.e. “মুক্তিযোদ্ধা যাচাই বাছাই নির্দেশিকা-২০১৬”) as provided with Annexure D of this writ petition shows that members of the scrutiny committee failed to come to a unanimous decision regarding the veracity of the status of the petitioner (at serial no.2), reflecting in the comment box of the said report as “দ্বিধাবিভক্ত” and the said committee defined the report as “কমিটি কর্তৃক দ্বিধাবিভক্ত সিদ্ধান্ত”. It is also not clear from the said report how many of the members (out of four) were dissenting as to the status of freedom fighters and the reasons behind such decision although the reasons ought to be embedded with the report of Jachai Bachai Committee as per “যাচাই বাছাই নির্দেশিকা-২০১৬, বিধি-৭”. Thereafter, based on such bifurcated report, the decision taken by the respondent nos.2-4 in their 67th meeting dated 05.03.2020 (Annexure E) to cancel the gazette and certificate of the petitioner is malafide and arbitrary. Moreover respondent No.3 alone investigated into the matter on the basis of said bifurcated report by failing to meet the pre-conditions laid down in

section 6 and 7(Jha) of the Jatio Muktijodda Council Ain 2002 and Jachai Bachai Nirdeshika, 2016 and thus violated the provisions of law.

That admittedly the petitioner was enjoying the status of freedom fighter since 2004 after exhausting and fulfilling the conditions required by law including the enlistment of petitioner's name in the gazette notification and subsequently the petitioner was receiving the state honorarium/allowance from June' 2017 to November 2019 and thus the petitioner accrued his lawful right to have enjoyed the benefits and status of freedom fighters like his fellow freedom fighters and that cancelling the gazette of the petitioner without following the provisions of law violates his legal right.

That Article 31 of the Constitution provides a guarantee that no individual of the country can be adversely affected except in accordance with law. That name of the instant petitioner has already been published in the official gazette, considering his certificates, solemn sacrifices and contributions in the liberation war and the petitioner stands on the same footing in terms of status and dignity with his fellow freedom fighters but the petitioner has been treated unequally and thus his right to be treated indifferently guaranteed under the constitution has been infringed.

That it is also evident from the affidavit-in-opposition filed by the respondent No.1 that even in disposing the Appeal dated 04.03.2020 filed by the petitioner in getting back his state honorarium, respondent No.2 disallowed the same on 03.11.2025 taking 5 long years, which is utterly frustrating and prejudicial to the interest of the petitioner who

was there to sacrifice his life in order to liberate his motherland. That state honorarium is the desire of a state to offer to the citizens on fulfilling certain conditions and state can stop paying it on the given policies. However, state cannot irrationally run away from the liability to pay the said honorarium on the basis of such unsubstantiated allegation and findings as discussed in the preceding paragraphs.

In view of the facts and circumstances as stated above and the reasons of the findings given, we find no cogent reason as to why the impugned decision taken by way of letter/memo being No. 48.02.0000.001.31.051.12.201 dated 05.03.2020 issued under the signature of respondent No.4 to cancel the gazette and provisional certificate of the petitioner as freedom fighter. Therefore, we are of the view that the impugned letter/memo dated 05.03.2020 was issued mechanically without considering the split-up report of the Jachai Bachai committee and ignoring the correct proposition of law and hence making the decision of cancelling the gazette of the petitioner unlawful, malafide, arbitrary and is of no legal effect and subject to be declared to have been passed without having any lawful authority.

In the result, the Rule is made absolute. The impugned memo No. 48.02.0000.001.31.051.12.201 dated 05.03.2020 is hereby declared to have been passed without lawful authority and is of no legal effect.

In the light of facts and circumstances as discussed above, the respondents are directed to pay the monthly allowance of the petitioner

in accordance with law from the date of receiving a copy of the judgment.

Communicate this judgment to the respondents concern at once.

There is no order as to costs.

Sheikh Abdul Awal, J:

I agree.