

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Mr. Justice Md. Ruhul Quddus

Writ Petition No. 6490 of 2010

Mohammad Ullah Ashraf
...Petitioner
-Versus-
Bangladesh and others
...Respondents

Mr. Md. Ozi Ullah, Advocate
... for the petitioner

Mr. Goutam Kumer Roy, D.A.G with Ms. Jesmin
Sultana Samsad, A.A.G
... for respondent 1

Mr. Md. Shamsul Huq, Advocate
... for added respondent 7

Judgment on 28.11.2012

Md. Ruhul Quddus, J:

This *rule nisi* at the instance of an aspiring candidate for appointment as Nikah Registrar was issued to examine the legality of a panel of three candidates for granting license of Nikah Registrar for Kadla union area within Kachua Police Station of Chandpur District and forwarding the same to the Ministry of Law, Justice and Parliamentary Affairs. (Annexes: K and K-1)

Facts leading to issuance of the Rule, in brief, are that the then Nikah Registrar of Kadla union area Md. Abdur Rab since deceased

had filed an application on 30.4.2007 for granting license of Nikah Registrar for the same area in favour of his son Mohammad Ullah Ashraf (the writ petitioner) stating that he was unfit to perform his duty because of illness (annex-A). The writ petitioner had also filed an application on 3.5.2007 to that effect (annex A-1). The District Registrar, Chandpur had scrutinized the application and forwarded it to the Ministry under Memo No. 266 dated 10.5.2007 (annex-B). On receipt of the memo the Ministry of Law initiated an enquiry to be held by the District Registrar. Accordingly he held the enquiry and sent his report under Memo No. 433 dated 19.7.2007 with positive comments about the writ petitioner (annex-E). In the meantime, father of the writ petitioner Md. Abdur Rab died. During the matter was pending, the Muslim Marriage and Divorce (Registration) Rules, 2009 (hereinafter called the Rules, 2009) came into force on 10.8.2009 repealing the previous Rules i.e. Muslim Marriage and Divorce (Registration) Rules, 1975. Under the new Rules the District Registrar issued a notice inviting applications for granting license of Nikah Registrar for some areas including the said Kadla Union. In response thereto the writ petitioner among others filed a fresh application for granting him license of Nikah Registrar.

The Advisory Committee constituted under rule 4 of the Rules, 2009 recommended a panel of three candidates, wherein the petitioner's name was not included. In that event, he moved in this Court and obtained the Rule with an order of stay.

The Government of Bangladesh represented by the Secretary Ministry of Law, Justice and Parliamentary Affairs and added respondent 7, another aspiring candidate included in the panel contest the Rule by filling two separate affidavits-in-opposition. In the affidavits their common contention is that the Rules, 1975 having been repealed in the meantime, there can be no preference of a son of any former Marriage Registrar as was provided in rule 5 (3A) of the Rules, 1975.

Mr. Md. Ozi Ullah, learned Advocate appearing for the writ petitioner submits that the petitioner is highly qualified and competent to be a Nikah Registrar. He is the son of late Md. Abdur Rab, the then Nikah Registrar of Kadla union area, for which he is an aspiring candidate. He had filed application long before in early 2007, which was taken into consideration and necessary enquiry was held. The District Registrar sent the enquiry report to the Ministry and recommended him for appointment under the memo dated 27.6.2007. But the concerned officials in the Ministry were sitting idle over the matter and after framing of the Rules, 2009 the District Registrar invited fresh applications and excluded the petitioner's name from the proposed panel. Since the petitioner had preference under rule 5 (3A) of the previous Rules and his application was pending, he accrued a right to get his application disposed of under the saving clause as provided in rule 41 (2) of the Rules, 2009 and without disposing of his previous application the panel proposed under the new Rules is illegal.

Mr. Jesmin Sultana Samsad, learned Assistant Attorney General appearing for respondent 1 submits that because of filling an application

in 2007 the petitioner cannot claim the license as a matter of right, specially when the Rules have already been repealed and as such the Rule in the present writ petition is liable to be discharged.

Mr. Shamsul Huq, learned Advocate for added respondent 7 adopting the submissions of the learned Assistant Attorney General further submits that the application filed by the writ petitioner was forwarded to the Ministry in 2007 and the enquiry whatsoever was also held in 2007. He sat idle over the matter for long three years and approached the Court in 2010. Moreover, he filed fresh application after the notice inviting applications under the Rules, 2009 was issued and thereby impliedly abandoned his previous application. The Rule is therefore, liable to be discharged on that count as well.

We have gone through the record and considered the submissions of the learned Advocates. It appears that when the writ petitioner filed the application, his father was alive and did not surrender the license for his alleged illness. However, during his application was pending his father died and the District Registrar sent his report to the Ministry in 2007 but the matter was not disposed of till framing of the new Rules. During this long period the writ petitioner did not move in this Court, but when the notice inviting applications for license under the new Rules was issued, he filed fresh application and when his name was not included in the panel, he moved in this Court with the instant writ petition. In such a case the previous application which the writ petitioner himself abandoned by implication is not protected under the saving clause of the Rules, 2009. After framing of the new Rules with



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no preferential clause and filing of his application thereunder, his previous application has become redundant.

We do not find any illegality in the process of preparation of the panel and as such do not find any substance in the Rule. Accordingly the Rule is discharged, however, without any order as to cost.

The order of stay granted at the time of issuance of the Rule is vacated.

Mohammad Bazlur Rahman, J:

I agree.