

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

Present:

Justice Sheikh Abdul Awal

And

Justice Md. Mansur Alam

Writ Petition No. 11494 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:

Al-Haj Abdur Rahim

..... Petitioner.

-Versus-

Government of Bangladesh represented by the Secretary, Ministry of Religious Affairs and others.

.....Respondents.

Mr. Minhahul Hoque Chowdhury with

Mr. M.M. Shafiullah, Advocates

..... For the Petitioner

Mr. A.M. Mahbub Uddin with

Mr. Faysal Hasan Arif with

Mr. Md. Kaisaruzzaman, Advocates

..... For the Respondent Nos. 7,9,12,13,15 and 17

Mr. Md. Raju Mia, Advocate

..... For the Respondent Nos. 2-4

Mr. Md. Bodiuzzaman Tapadar, D.A.G with

Ms. Salma Sultana (Soma), D.A.G with

Mr. Md. J.R. Khan Robin, A.A.G with

Mr. A.B.M. Ibrahim Khalil, A.A.G with

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

... For the Government-Respondents

**Heard on 13.08.2025, 19.08.2025 and
Judgment on 21.08.2025**

Sheikh Abdul Awal, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the impugned Memo No. 16.02.0000.015.31.588.16/39 dated 01.09.2024 (Annexure A) issued under the signature of Respondent No.3 cancelling the committee approved vide memo No. 16.02.0000.015.31.588.16/142 dated 21.05.2024 of the Jamia Rahmania Arabia Sat Mosjid Madrasa Waqf Estate [E.C. No. 19588 (2nd part)] approving 13 (thirteen) members committee shall not be declared to have been issued without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to take necessary steps to ensure peaceful management of the Jamia Rahmania Arabia Sat Mosjid Madrasa Waqf Estate [E.C. No. 19588 (2nd part)] in accordance with law and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts as per writ petition briefly are that Jameya Rahmania Arabia Satmasjid Madrasha (hereinafter referred as the Madrasha) is duly registered in joint stock company and its registration number is No. 1229(40)1988. The Madrasha runs in pursuance with the registered Constitution of the Madrasha. Article 5 of the Constitution provides that there will be an Executive Committee of the Madrasha consisting of 21 members to be elected for 3 years with a view to conducting the affairs of the Madrasha.

The Madrasha established in a 5 storied pucca building situated on 16 katha of land in the City of Dhaka, which valued not less than Tk. 50 crore. The said land originally belonged to (1) Al- haj Mohammad Ali, (2) Al-haj Noor Hossain and (3) Sabet Ali, who possessed the same by executing and registering 2 deeds of Waqf dated 09.11.1988 and 03.12.1992 respectively and the Madrasha

building has been constructed thereon by the public donated money and the money of the Waqif. The Waqif has mentioned in the Deed of Waqf that the Executive Committee of the Madrasha and there shall be the Motawally of the Waqf Estate and subsequently by making an amendment it has been mentioned that at least 2 persons from the Wafiq family will remain the member of the executive Committee.

The first Executive Committee of the Madrasha was constituted in the year of 1989 and Mr. Al-haj Abdul Malek, son of late Abul Hashem was the President of the Committee, and Maulana Azizul Haque was a member of that committee and was also the Principal of the Madrasha. The Madrasha is completely a non-political religious organization and all sort of political activities was prohibited in the Madrasha territory. As per Article 3 of the constitution of Madrasha, the membership of any member of the Executing Committee is ceased if he died, or resigns, and if he remained absent for consecutive 3 meetings of the Executive Committee or it is found his act against the interest of the Marsha or anti-constitutional activities and the executive committee can also add any member in the Executive Committee according to Article 4 of the constitution of Madrasha.

It has been alleged in the writ petition that Principal of Madrasha, Azizul Haque was a political person, and he tried to use the Madrasha for achieving his political goal by involving his apostle students in political activities. At one stage, on demand of the then students, guardians and other Members of the Executive Committee, Maulana Azizul Haque was compelled to resign from the Post of Principal which was approved in the 89th Meeting of the Executive Committee and Mr. Hifzur Rahman was appointed as new Principal of the Madrasha. Even after resignation from the post

of principal, Maulana Azizul Haque continued his political activities in the Madrasha vicinity and due to some other reasons such as misappropriation of fund, he was expelled from the member of Executive Committee of Madrasha on 02.07.2000 in the 100th Meeting of the Committee. Thereafter, Maulana Azizul Haque became very much annoyed with the committee and started conspiracy against the Madrasha and its committee members. In this background while on 28.10.2001, the 4th party alliance formed new Government and then said Maulana Azizul Haque being a part of the Government forcibly occupied the office and few rooms of the Madrasha on 03.11.2001 by misusing his power and creating terrorism in the area with the help of local terrorists and thereafter, both the parties filed number of cases time to time to take control over the Madrasha and both groups time to time ruled the Madrasha by forming Madrasha managing committee and lastly on 18.05.2021, the petitioner got approval their committee of 21 members with the help and in assistance of former Awami Government and forcefully evicted the committee of respondent Nos. 7, 9, 12, 13, 15, 17 and thereafter the petitioner further renewed the committee for a tenure of 03(three) years on 21.05.2024.

On 05.08.2024 on the face of strong movement of student and people of Bangladesh Awami Government ousted from the power at 2:00 p.m. and thereafter on the same day the members of the committee of petitioner left behind the madrasha premises keeping the madrasha with uncared condition and accordingly the institutional and administrative program stopped and thereafter on 28.08.2024 the respondent Nos. 7, 9, 12, 13, 15 and 17 along with other respondents filed an application for the approval of the committee comprising of 13 members to run the madrasha and on

01.09.2024 the office of the Waqf Administrator after an inquiry canceled the previous committee and approved the new committee comprising of 13 members including respondent Nos. 7, 9, 12, 13, 15 and 17 and since then, the respondent Nos. 7, 9, 12, 13, 15 and 17 have been running/ controlling the madrasha.

Aggrieved thereby the petitioner on getting power (Annexure-O) filed this writ petition and obtained the present writ petition.

Mr. Minhajul Hoque Chowdhury, the learned Advocate appearing for the writ petitioner submits that no notice was ever been served for the alleged inquiry and the statement about serving notice by hand is not correct, in the report, it has been stated that the notice was served by hand, but, on the other hand it has also been stated that none was present on behalf of the petitioner at the time of inspection and they left the madrasa uncared condition on 05.08.2024 and those statements are contradictory to each other which cannot stand together. Next, the learned Advocate submits that the notice of inquiry does not substantiate the requirement of law of giving statutory notice as required under Section 32 (1) of the Waqf Ordinance and since no notice has ever been served upon the petitioner under section 32 (1) of the Ordinance, the petitioner was not given any opportunity of being heard and thereupon the impugned order is clear violation of principle of natural justice, which cannot be sustained in law. Ref. 3 BLC (HCD) 447. He further submits, it is apparent from the impugned letter that the inquiry was held on 31.08.2024 and the report was submitted on 01.09.2024 and impugned Order has been passed on the same day i.e. on 01.09.2024 which manifests that the impugned order was passed in total disregard of the section 32 of the Waqf Ordinance which is clear violative to Article 31 of the Constitution of the Peoples Republic of Bangladesh. Finally, Mr. Minhaz submits that

since the appellate forum as expressed by Section 32(2) of the Waqf Ordinance as an alternative remedy prescribed a pre-condition of handing over the possession of the Office of Mutawalli before bringing an Appeal, it cannot be treated as an adequate and efficacious alternative remedy against an order passed by the Administrator of Waqf under Section 32(1) of the Ordinance and thus, the instant Writ Petition under Article 102(2) of the Constitution is well maintainable. Ref. 18 BLD (AD) 269 and 3 BLC (HCD) 447.

Mr. A.M. Mahbub Uddin, the learned Advocate appearing for the Respondent Nos. 7,9,12,13,15 and 17, on the other hand, submits that since the impugned order is an appealable order as per section 32(2) of the Waqfs Ordinance, 1962, therefore the instant Writ Petition is not maintainable. [Ref. 14 BLC (AD) 92]. He adds that a bundle of disputed question of facts are involved in the instant Writ Petition which can only be settled by the competent Appellate Court, that is, the learned District Judge, Dhaka and thus the instant Writ Petition also is not maintainable. Mr. Mahbub Uddin, the learned Advocate referring “Annexure-A” submits, it is on record that notice was duly issued and served by the Inquiry Committee to the Writ Petitioner who willfully refrained from appearing before the inquiry committee for hearing. He further submits it is apparent from “Annexure -M” of the Writ Petition, that there are series of litigations regarding the committee of the said Madrasha which need to be scrutinized by the competent appellate authority not under summary writ jurisdiction of this Court. Further, “Annexure-M” suggests that the petitioner on 19.07.2021 entered into the Madrasha with the help of the then Fascist Government by using their activists against Mawlana Mamunul Haque. Finally, Mr. Mahabuddin submits that the impugned order has already been

acted upon in accordance with law inasmuch as the respondents are functioning as the Executive Committee of the Madrasha since 01.09.2024 and as such, the Rule Nisi is liable to be discharged.

Mr. Md. Bodiuzzaman Tapadar, the learned Deputy Attorney General appearing for the Government Respondent No.1 submits that the Writ Petition is not maintainable as the impugned order is appealable under section 32(2) of the Waqfs Ordinance, 1962. This implies that the petitioner should pursue the appellate remedy rather than resorting to a Writ Petition, which is typically used when no other adequate legal remedy is available.

Mr. Md. Raju Mia, the learned Advocate, appearing for the respondent No.4, at the very outset adopted the submissions of Mr. A.M. Mahbub Uddin, the learned Advocate for the respondent Nos. 7,9,12,13,15 and 17 and the learned Deputy Attorney General.

Having heard the learned counsels for the parties and having gone through the materials on record.

On the scrutiny of the record, it appears that in this writ petition the petitioner challenges the impugned Memo No. 16.02.0000.015.31.588.16/39 dated 01.09.2024 (Annexure-A) issued under the signature of Respondent No.2 cancelling the committee approved vide memo No. 16.02.0000.015.31.588.16/142 dated 21.05.2024 of the Jamia Rahmania Arabia Sat Masjid Madrasa Waqf Estate (E.C. No. 19588 (2nd part)) approving 13 (thirteen) members committee.

To meet the arguments of the learned counsels for the parties, we feel it necessary to quote hereunder the application filed by Respondent No.6, Prof. Maulana Giasuddin Ahmed and inquiry report (Annexure-N and N-1) for having a better view in the dispute which reads as follows :

বরাবর,
 ওয়াকফ প্রশাসক, বাংলাদেশ
 বাংলাদেশ ওয়াকফ প্রশাসকের কার্যালয়
 ৪ নং নিউ ইন্সটন রোড, ঢাকা-১০০০।

বিষয়: পরিচালনা কমিটি অনুমোদনের জন্য আবেদন।

সূত্র: ই.সি.নং-১৯৫৮৮ (জামি'আ রাহমানিয়া আরাবিয়া সাত মসজিদ মাদ্রাসা ওয়াকফ এস্টেট), থানা- মোহাম্মদপুর, জেলা-ঢাকা।

মহোদয়,

সবিনয় নিবেদন এই যে, সূত্রে বর্ণিত ওয়াকফ এস্টেটস্থ "জামি'আ রাহমানিয়া আরাবিয়া সাত মসজিদ মাদ্রাসাটি স্বনামধন্য ও ঐতিহ্যবাহী দ্বীনি শিক্ষা প্রতিষ্ঠান হিসেবে পরিচিত। দীর্ঘ বহুবছর যাবত আমরা এই প্রতিষ্ঠানটি সুচারুরূপে পরিচালনা করেছি। গত কয়েক বছর যাবত রাজনৈতিক প্রভাব খাটিয়ে একটি মহল মাদ্রাসাটি জোরপূর্বক দখলে রেখেছিলো। তারা অবৈধ প্রভাব খাটিয়ে আপনার কার্যালয় থেকে সম্প্রতি একটি পরিচালনা কমিটি অনুমোদন নেয়। গত ৫ আগস্ট ২০২৪ খ্রিঃ তারিখ সরকার পরিবর্তন হলে তারা মাদ্রাসাটি অরক্ষিত অবস্থায় ফেলে রেখে আত্মগোপনে চলে যায়। বর্তমানে মাদ্রাসাটির শিক্ষা ও প্রশাসনিক কার্যক্রম স্থবির হয়ে পড়েছে। এহেন পরিস্থিতি থেকে উত্তোরনে অতিদ্রুতই একটি পরিচালনা কমিটির অনুমোদন প্রয়োজন। যেহেতু ইতিপূর্বে আমরা সুনামের সাথে মাদ্রাসাটি পরিচালনা করেছি, সেহেতু মাদ্রাসাটির ঐতিহ্য ও সুনাম অক্ষুন্ন রাখার সার্থে আমাদের গঠিত নিম্নোক্ত ১৩ (তের) সদস্য বিশিষ্ট পরিচালনা কমিটিকে আগামী ৩ (তিন) বছরের মেয়াদে অনুমোদন প্রদানে আপনার সদয় দৃষ্টি আকর্ষণ করছি।

Inquiry report as evidenced by “Annexure -N-1” which reads as follows:

আলহাজ্ব আব্দুর রহীম অবৈধ দখলদার উচ্ছেদের জন্য ২২/০৮/২০২৪ তারিখে এবং প্রঃ মাওঃ গিয়াস উদ্দিন আহমেদ পরিচালনা কমিটি অনুমোদনের জন্য ২৮/০৮/২০২৪ তারিখে পৃথক দুটি দরখাস্ত দাখিল করেন। উলিখিত দরখাস্ত দুটির বিষয়ে সরেজমিন তদন্তক্রমে প্রতিবেদন দাখিলের জন্য স্মারক নং- ১৬.০২.০০০০.০১৬.৩১.৭৯০.৪৯/৩৫ তাং-২৮/০৮/২০২৪ মূলে নিম্ন স্বাক্ষরকারীকে নির্দেশ প্রদান করা হয়।

২। স্মারক নং-১৬.০২.০০০০.০১৬.৩১.৭৯০.৪৯/৩৫ তাং-২৮/০৮/২০২৪ মাধ্যমে নির্দেশিত হয়ে অত্রাফিস নং-ওঃপরি:ঢাকা-৪/১৫, তাং-২৮/০৮/২০২৪ ইং মূল ৩১/০৮/২০২৪ তারিখ তদন্তের দিন ধার্য করে পক্ষদ্বয়কে বাহক মারফত নোটিশ জারী করি (সংযুক্ত)। তদন্তকালে প্রঃ মাওঃ গিয়াস উদ্দিন আহম্মদ ও তাঁর প্রস্তাবিত কমিটির সদস্যবৃন্দ তদন্তস্থল মাদ্রাসা প্রাঙ্গনে উপস্থিত থাকলেও আলহাজ্ব আব্দুর রহিমকে উপস্থিত পাওয়া যায় নি।

৩। আলহাজ্ব মাওলানা আব্দুর রহিমকে তদন্তস্থলে (মাদ্রাসায়) উপস্থিত না পাওয়ায় তার বক্তব্য গ্রহণ করা সম্ভব হয় নি।

৪। প্রঃ মাওঃ গিয়াস উদ্দিন জানান যে, জামি'আ রাহমানিয়া আরাবিয়া সাত মসজিদ মাদ্রাসাটি স্বনামধন্য ও ঐতিহ্যবাহী দ্বীনি শিক্ষা প্রতিষ্ঠান হিসেবে পরিচিত। দীর্ঘ

বহুবছর যাবৎ তারা এই প্রতিষ্ঠানটি সুচারুরূপে পরিচালনা করেছেন। গত কয়েক বছর যাবৎ রাজনৈতিক প্রভাব খাটিয়ে একটি মহল মাদ্রাসাটি জোরপূর্বক দখলে রেখেছিল। তারা অবৈধ প্রভাব খাটিয়ে ওয়াক্ফ প্রশাসন থেকে সম্প্রতি একটি পরিচালনা কমিটি অনুমোদন নেয়। গত ৫ আগস্ট ২০২৪ খ্রিঃ তারিখ সরকার পরিবর্তন হলে উক্ত কমিটির সদস্যরা মাদ্রাসাটি অরক্ষিত অবস্থায় ফেলে রেখে আত্মগোপনে চলে যায়। বর্তমানে মাদ্রাসাটির শিক্ষা ও প্রশাসনিক কার্যক্রম স্থবির হয়ে পড়েছে। এহেন পরিস্থিতি থেকে উত্তোরনের জন্য অতি দ্রুত একটি পরিচালনা কমিটি অনুমোদন প্রয়োজন। যেহেতু ইতিপূর্বে তাহারা সুনামের সাথে মাদ্রাসাটি পরিচালনা করেছেন, সেহেতু মাদ্রাসাটির ঐতিহ্য ও সুনাম অক্ষুন্ন রাখার স্বার্থে তাঁদের গঠিত (তিন) বছর মেয়াদে অনুমোদন নিম্নোক্ত ১৩ (তের) সদস্য বিশিষ্ট পরিচালনা কমিটিকে আগামী ৩ দানের জন্য অনুরোধ করেন।

From a combined reading of the above quoted application filed by Respondent No.6 and inquiry report together with impugned order dated 01.09.2024, it is apparent that after ousting from the power of the then Awami-league government on 05.08.2024 the previous petitioner's executive committee of Madrasha left the Madrasha premises keeping with uncared condition of Madrasha and thereafter, under the prevailing situation on 28.08.2024 respondent Nos. 7, 9, 12, 13, 15 and 17 along with other respondents filed an application for the approval of the committee comprising of 13 members to run the madrasha and on 01.09.2024 the office of the Waqf Administrator after an inquiry canceled the previous committee and approved the committee comprising of 13 members including respondent Nos. 7, 9, 12, 13, 15 and 17 and since then, the respondent Nos. 7, 9, 12, 13, 15 and 17 have been dealing with the madrasha. Further, impugned order dated 1.09.2024 as evidenced by "Annexure-A" to the writ petition clearly suggests that in the attending facts of the case notice was duly issued and served by the Inquiry Committee to the writ Petitioner, who refrained from appearing before the inquiry committee for hearing. In the facts of this case mere filing an application by the petitioner on 18.05.2025 to the office of respondent No.2 for taking necessary steps for evicting the illegal

possessors of the Madrasha does not suggest that after ousting from the power of the then Awami league Government on 05.08.2024 the petitioner was available in the Madrasha premises or he did not leave the Madrasha premises keeping the same with uncared condition.

Now, let us see whether the impugned order is appealable or not. As we have already noticed in this case impugned order cancelling the committee approved vide memo No. 16.02.0000.015.31.588.16/142 dated 21.05.2024 of the Jamia Rahmania Arabia Sat Mosjid Madrasa Waqf Estate [E.C. No. 19588 (2nd part)] approving 13 (thirteen) members committee.

The Waqfs Ordinance, 1962 provides specific provisions under what circumstances a mutawalli may be removed and in doing so what criteria should be followed. Section 32(1) provides that the Administrator of Waqfs may on his own motion or on an application of any person remove a mutwalli on some specified grounds, which among others, include breach of trust, mismanagement, malfeasance or misappropriation of the Waqf Estate. The section also includes a proviso that 'no such order for removing the mutawalli shall be made without giving him an opportunity of being heard'. Sub-section (2) gives the aggrieved person a right of appeal to the learned District Judge, but no such appeal lies, unless the mutawalli has made over charge of the waqf estate to the new mutawalli. Under sub-section (3) a revision also lies to the High Court Division against the order of District Judge.

The mutawalli has a right to be heard and to reply to the allegations made against him, especially when this right has been given in the proviso to the section. It has always been considered a cardinal interpretation of any deed or statute that the proviso always governs the enacting part of the section. If the

Administrator denies mutawalli's right to be heard in the proceeding of his removal the denial would amount to a breach of the mandatory provision of the Waqfs Ordinance. In this case, we have already noticed that after the falling of the then Awami Government on 05.08.2024 the members of the committee of petitioner left behind the madrasha premise and in this way getting madrasha lying with uncared condition on 28.08.2024 the respondent Nos. 7, 9, 12, 13, 15 and 17 along with other respondents filed an application for the approval of the committee comprising of 13 members to run the madrasha and on 01.09.2024 the office of the Waqf Administrator after an inquiry canceled the previous committee and approved the new committee comprising of 13 members including respondent Nos. 7, 9, 12, 13, 15 and 17. In such facts and circumstances of this case it cannot be said that unless the mutawalli has made over charge of the waqf estate to the new mutawalli, writ petition is well maintainable.

In the case of Saifuddin Ahmed Vs. Administrator of Waqf and others reported in 14 BLC (AD) 94 , it has been held that-

“It appears from the record that in the two Waqf deeds there is no express provision for appointment of Mutwalli. The petitioner was appointed Mutwalli on 3-6-1996 for a period of five years and its term expired on 5-6-2003. It also appears from the record that the Administrator has power to appoint Mutwalli under the law and the Administrator has the right to do so and if there is any grievance against such action it can be agitated before the District Judge by way of appeal. If a Mutwalli is removed and he is aggrieved he can prefer appeal under sub-section (3) of section 32 of the Ordinance. The petitioner not having taken any recourse of such provision instead invoked writ jurisdiction under Article 102 of the constitution which is not in

accordance with law and as the petition was not maintainable.”

In view of the discussions above vis-a-vis the above quoted decision, we find no difficulty whatever in holding that the impugned order dated 01.09.2024 (Annexure-A) issued under the signature of Respondent No.2 cancelling the committee approved vide memo No. 16.02.0000.015.31.588.16/142 dated 21.05.2024 of the Jamia Rahmania Arabia Sat Mosjid Madrasa Waqf Estate (E.C. No. 19588 (2nd part)) approving 13 (thirteen) members committee is appealable to the learned District Judge, Dhaka. Writ petition is not maintainable unless the statutory remedy to appeal has been exhausted. We therefore, find that the petitioner has/had the alternative remedy by way of appeal and as such, this Writ Petition is not maintainable.

On the facts of the case and on consideration of the legal position, we find no illegality in the impugned order.

Mr. A.M. Mahbub Uddin, the learned Advocate for the respondents at the end of the day strenuously argued that petitioner is a fugitive and it is well established that a fugitive typically has no legal right to seek justice without first surrendering to the court to address their legal standing.

In the facts of the case as we have already noticed, the grievance of Mr. A.M. Mahbub Uddin does not appear to be without substance.

The contentions raised by the learned Advocate Mr. Minhaz for the aforesaid reasons are of no substance. The principles as enunciated in the cited decisions have no manner of application in the facts and circumstances of the instant case inasmuch as facts of those cases are quite distinguishable from the facts of the present

case. Every case shall be considered in the facts and circumstances of that case only.

In the facts and circumstance of the case the petitioner may avail the remedy of appeal, if they so advised and if it is open to them.

In view of our discussions made in the foregoing paragraphs it is by now clear that instant Rule must fail.

In the result the Rule is discharged. The impugned order/ Memo No. 16.02.0000.015.31.588.16/39 dated 01.09.2024 (Annexure A) dated 01.09.2024 is hereby maintained.

Communicate this judgment and order to the concerned authority at once.

Md. Mansur Alam, J:

I agree.