

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

Writ Petition No.9390 of 2010

Shahidul Haque and others
...Petitioners
-Versus-
Bangladesh and others
...Respondents

with

Writ Petition No.9394 of 2010

Md. Hafizur Rahman and another
... Petitioners
-Versus-
Bangladesh and others
õ Respondents

Mr. Mainul Hosein with Mr. Abdur Rahim,
Advocates

õ for the petitioners in writ petition 9390 of 2010
and respondent 3 in writ petition 9394 of 2010

Sayed Mahmudul Hasan with Mr. Netya Gopal
Debnath, Advocates

...for the petitioners in writ petition 9394 of 2010

Mr. S.M.Quamrul Hasan, A.A.G

... for respondent 1 in writ petition 9390 of 2010

Judgment on 2.8.2012

Md. Ruhul Quddus,J:

Since there is an order in Writ Petition No.9394 of 2010 for its hearing analogously with Writ Petition No.9390 of 2010 and the issues involved in both the writ petitions are related to the affairs of

National Association of Small and Cottage Industries of Bangladesh (hereinafter called NASCIB), these two writ petitions have been heard analogously and are being disposed of by one judgment.

The Rule in Writ Petition No.9390 of 2010 was issued challenging an order as contained in Memo No. MC/TO-2/A-55/89(2)586 dated 29.11.2010 signed by the Director of Trade Organizations and Deputy Secretary, Ministry of Commerce appointing another Deputy Secretary as Administrator of NASCIB with a direction to hold the election of its central executive committee, while in Writ Petition No.9394 of 2010 the Rule was issued to examine the legality of a voter list prepared and finally published by its Election Board.

Facts leading to issuance of the Rule in Writ Petition No.9390 of 2010, in brief, are that the central executive committee of NASCIB by its resolution dated 15.9.2010 formed an Election Board as well as an Election Appeal Board for holding the election of its central executive committee for the term 2011-12. The Election Board declared schedule on 16.9.2010 fixing 13.12.2010 to hold the election, which was duly communicated to all district committees and was also published in the Daily Naya Diganta dated 20.9.2010. The Election Board had prepared a draft voter list on 23.10.2010 and after scrutiny published it finally on 2.11.2010 (annexes: C and C-1 to the writ petition). The writ petitioners filed nomination papers to contest the election for the post of executive members. As there were no

contesting candidates, all the 31 (thirty-one) candidates including the petitioners were elected unopposed on 27.11.2010.

Thereafter, the said executive members elected their President and Vice-Presidents uncontested and the Election Board published its result on 28.11.2010 (annex-F). The Secretary General of NASCIB duly communicated the result of election to the Director of Trade Organizations (herein respondent No.2) on 29.11.2010. When the petitioners were awaiting installation in office, all on a sudden respondent No.2 appointed Mr. Pronab Kumar Ghosh, a Deputy Secretary of the Ministry of Commerce as Administrator of NASCIB and directed him to conduct the election of its central executive committee within six months by the impugned order. In that event, the writ petitioners moved in this Court with the instant writ petition and obtained the Rule with an order of stay.

The petitioners claimed that in passing the impugned order, respondent No.2 did not comply with the mandatory provision of section 10 (1) of the Trade Organization Ordinance, 1961 (hereinafter called the Ordinance) by serving any notice in writing and affording the existing executive committee any opportunity to make representation in its defense.

Bangladesh represented by the Secretary, Ministry of Commerce being respondent No.1 has contested the Rule by filling an affidavit-in-opposition and supplementary affidavit-in-opposition. In the said affidavits, respondent No.1 has denied the material

allegations of the writ petition and stated, *inter alia*, that A. K. M. Muzibur Rahman, President of NASCIB, Kishoreganj district committee and office bearers of twenty other district committees by filing separate applications brought some allegations against the central executive committee of NASCIB on 5.9.2010 and 2.11.2010. Upon the said application, the Ministry of Commerce made an inquiry into the allegations and found substance therein. The Director of Trade Organizations and Deputy Secretary, Ministry of Commerce served a notice upon the President, central executive committee of NASCIB on 26.9.2010 to which he made a reply on 30.9.2010. Since the reply was not clear and satisfactory, a Senior Assistant Secretary of the Ministry served another notice dated 12.10.2010 upon him with a copy to the said A. K. M. Muzibur Rahman to appear before respondent No.2 for hearing in person. After hearing the parties concerned, respondent No.2 found substance in the allegations and accordingly appointed the Administrator and directed him to hold the election within six months and handover charge to the newly elected committee.

Respondent No.1 has further contended that as a matter of fact, no meeting of the executive committee was ever held for constitution of the Election Board, and no voter list was prepared, published or communicated according to Rules. No election to constitute the central executive committee of NASCIB for the term 2011-12 was held. When the allegations were being inquired into against the executive committee, the Election Board published the

schedule only to avoid punishment and to frustrate the proceedings against the committee. After the so called election of the executive members was held, no schedule whatsoever was declared for holding the second phase of election for constitution of the full executive committee including the President and Vice-presidents. Authenticity of annexes-C, C1, D, E, F and G was also denied by this respondent.

The respondent has also stated that the President of NASCIB, Tangail District unit Mirza Nurul Gani as plaintiff instituted Title Suit No.671 of 2010 and prayed for temporary injunction restraining the Election Board from holding the election. Being refused he filed Civil Revision No.357 of 2010 before the District Judge, Dhaka. In the said civil revision, learned District Judge issued a notice to show cause and passed an interim order directing the parties to maintain *status quo* on holding the election by his order dated 24.11.2010.

It needs to be clarified that in midst of hearing, two applications were filed in Writ Petition No.9390 of 2010, one by respondent No.1 for treating its application dated 23.6.2011 for vacating the order of stay as a supplementary affidavit-in-opposition, and the other by the writ petitioners for treating their affidavit-in-opposition thereto (affirmed on 27.7.2011) as their affidavit-in-reply. On hearing of those two applications, the application dated 23.6.2011 for vacating the order of stay filed by respondent No.1 has been treated as its supplementary affidavit-in-opposition and the affidavit-in-opposition filed thereto by the writ petitioners has been treated as their affidavit-

in-reply. For convenience these are mentioned as supplementary affidavit-in-opposition filed by respondent No.1 and affidavit-in-reply filed by the writ petitioners.

Facts relevant for disposal of the Rule in Writ Petition No.9394 of 2010 are that the two petitioners being Presidents of Noakhali and Gazipur district committees of NASCIB sent to its central Election Board two separate lists with names of three nominees in each including themselves to be included in the voter list from their respective district committees, but the Election Board published the voter list with names of some others, who were strangers and not recommended by the respective district committees. They brought some other allegations in respect of preparation and publication of the voter list. Petitioner No.1 preferred an appeal before the Election Appeal Board, but the Appeal Board did not take up the appeal and the Election Board most illegally finalized the voter list. They served notice demanding justice upon the Secretary, Ministry of Commerce, and the Director of Trade Organizations and getting no result moved in this Court with the instant writ petition, obtained the Rule and an interim order of stay on further proceedings of the election.

NASCIB being respondent No.3 has contested the Rule by filing an affidavit-in-opposition through its Secretary General contending, *inter alia*, that the lists of nominees sent by the writ petitioners were defective and therefore, were not considered by the

Election Board according to rule 9 (Ta) of the Election Rules, 2011-2012. The voter list was rightly published.

Mr. Mainul Hosein, learned Advocate for the petitioners in Writ Petition No.9390 of 2010 has submitted that the newly elected committee was not given any opportunity to make representation as provided in section 10 (1) of the Ordinance, although a notice was served upon the previous committee which made a reply thereto. After receiving the reply of the previous committee, the Ministry of Commerce took quite a long time, but did not interfere with the election proceedings and allowed the Election Board to hold the election. The present petitioners were elected unopposed and the Secretary General of NASCIB communicated the Ministry about constitution of the new executive committee by a letter dated 29.11.2010 (annex-G to the writ petition), but respondent No.2 without canceling or nullifying the said election passed the impugned order, which was illegal and without lawful authority. The impugned order was not addressed to the previous or present executive committee of NASCIB. The order having been passed by the Director of Trade Organizations is also without jurisdiction inasmuch as section 10 (1) of the Ordinance gives authority to the Government to appoint an Administrator, not to the Director of Trade Organizations.

Mr. Netya Gopal Debnath, learned Advocate for the petitioners in Writ Petition No.9394 of 2010 has submitted that the executive committee of NASCIB and its Election Board were proceeding to hold

a farcical election with a faulty voter list. In spite of several representations to the Ministry as well as to the Director of Trade Organizations, and preferring appeal to the Election Appeal Board, they did not get any result and was constrained to move this writ petition for a declaration that the voter list was without lawful authority, and for direction upon the respondents to prepare a fresh voter list and declare a fresh schedule for holding the election, but the Rule was issued only against the legality of voter list. Under the peculiar facts and circumstances, this Court can interfere with the illegal voter list and pass necessary direction to secure the ends of justice as the faulty voter list was prepared and published by the so called Election Board with a malafide intention to deprive the majority members of the trade organization from exercising their voting rights and the Government in the Ministry of Commerce, or the Director of Trade Organizations failed to perform their duties in controlling and supervising the affairs of the trade organization.

Mr. S. M. Quamrul Hasan, learned Assistant Attorney General appearing for the respondent in Writ Petition No.9390 of 2010 has taken us through the affidavit-in-opposition, supplementary affidavit-in-opposition and documents annexed thereto. At the very outset he has submitted that the show cause notice was duly served upon the central executive committee of NASCIB that was functioning at the relevant time and its President made a reply thereto. Since the reply was not satisfactory, the Government rightly passed the impugned order and committed no illegality, which can be interfered with by this

Court. Moreover, the petitioners moved in this Court with the instant writ petition without exhausting the alternative remedy of appeal as provided in section 15 of the Ordinance and as such the writ petition is not maintainable.

Mr. Quamrul Hasan has further submitted that the writ petitioners obtained the Rule by suppressing material facts relating to service of notice under section 10 (1) of the Ordinance. They also suppressed the facts of pendency of the civil suit, revision and order of *status quo* passed therein, and held the so called election violating the order of *status quo*. In this regard he refers to the case of Bangladesh Bank and others Vs. Zafar Ahmed Chowdhury and another reported in 53 DLR (AD), 70.

In reply, Mr. Mainul Hosein has submitted that since the impugned order was not addressed to the newly elected committee, the petitioners were not in a position to challenge the same by filing an appeal as provided in section 15 of the Ordinance. On the point of *status quo* passed by the District Judge, Dhaka in Civil Revision No.357 of 2010, he submits that without exhausting the forum of arbitration as provided in section 12 of the Ordinance, any suit in respect of any act or election of a trade organization is not maintainable and, therefore, the order of *status quo* had no force in law. Moreover, before holding the election, the order of *status quo* was not communicated to the Election Board or the executive

committee of NASCIB and, therefore, there was nothing wrong in holding the election according to the schedule declared earlier.

Mr. Mainul Hosein being the Advocate for respondent No.3 in Writ Petition No.9394 of 2010 has contended that in this writ petition Rule was issued challenging a voter list published by the Election Board of NASCIB, which is not a person within the meaning of article 102 of the Constitution and as such the writ petition is not maintainable. In support, he refers to the case of Khorshed Alam, Managing Director of Spark and Construction Ltd. Vs. Ministry of Commerce, Government of the Peoples Republic of Bangladesh and others reported in 47 DLR, 209.

We have gone through the records and considered the submissions of the learned Advocates. The petitioners obtained the Rule in Writ Petition No.9390 of 2010 mainly on the ground of natural justice and non-compliance of service of notice under section 10 (1) of the Ordinance. But it appears from the affidavit-in-opposition and supplementary affidavit-in-opposition filed by respondent No.1 that the President of NASCIB, Kishorganj district committee filed an application dated 5.9.2010 to the Director of Trade Organizations for appointment of an Administrator (annex-2). In the said application allegations of gross illegality and violation of Rules against the central executive committee of NASCIB in managing its affairs, preparation of voter list and process of election were brought. A notice in compliance of section 10 (1) was served upon the President of

NASCIB, who made a reply thereto on 30.9.2010 (annexes-3 and 4). The Government in the Ministry of Commerce was not satisfied with the reply and served another notice upon him to appear for hearing in person (annex-5). In the meantime the President of NASCIB, Tangail district committee Mirza Nurul Gani and 19 other office bearers of different district committees made another representation to the Secretary, Ministry of Commerce bringing similar allegations against the central executive committee (annex-8). However, the Government in the Ministry of Commerce gave notice twice to the executive committee and after exhausting the process passed the impugned order showing specific reasons. Authenticity of the documents filed by respondent No.1, have not been denied by the writ petitioners in their affidavit-in-reply. NASCIB is a legal entity having its registered office at 79, Siddeswari Circular Road (1st floor), Malibagh, Dhaka-1217 and the writ petitioners claimed their committee to be a successive committee. Therefore, there was no requirement of fresh service of notice upon the committee allegedly elected. By serving notice twice upon the President of the executive committee that was functioning at the relevant time (annexes-3 and 5), the legal requirement of service of notice under section 10 (1) of the Ordinance was fulfilled.

According to article No.36 of the Articles of Association of NASCIB, the Secretary General is its Chief Officer accountable to the central executive committee. He is to carry on and have charge of all its correspondences. It appears from the impugned order that it was addressed to the Secretary General of NASCIB having its office at

79, Siddeswary Circular Road (1st floor), Malibagh, Dhaka-1217. It means it was served upon NASCIB that includes its central executive committee. It further appears that in connected Writ Petition No.9394 of 2010, NASCIB being respondent No.3 has contested the Rule by filing an affidavit-in-opposition through its Secretary General and has been represented by the same Advocate. Nowhere in Writ Petition No.9390 of 2010 it has been stated that the impugned order was not communicated to the Secretary General and how the petitioners came to know about its text. Under the circumstances, we are unable to accept the argument advanced by Mr. Mainul Hosein that it was not addressed and communicated to the existing executive committee and therefore, they were not in a position to prefer an appeal against the same. Since the petitioners were aggrieved by the order impugned in Writ Petition No.9390 of 2010, they could have preferred an appeal under section 15 of the Ordinance in either circumstance.

The impugned order was passed on the letter head of the Government in the Ministry of Commerce and it was signed by the Director of Trade Organizations and Deputy Secretary of the Ministry. Only because of typing the portfolio of Director of Trade Organizations, the order cannot be treated to have not been passed by the Government. Section 10 (1) of the Ordinance confers authority on the Government to supersede any executive committee of a trade organization and appoint an Administrator, if ~~the~~ *the Government is of opinion that the affairs of a registered trade organization are not*

being properly managed and that the interests of trade and industry so require+. We do not think that the order was passed without jurisdiction.

The petitioners claimed that the election was held on 27.11.2010 and the executive committee was formed on 28.11.2010, whereas in Civil Revision No.357 of 2010, learned District Judge, Dhaka passed an order on 24.11.2010 directing the parties to maintain *status quo* on holding the election (annex-12). The said order was communicated to the Chairman of the Election Board by a letter dated 25.11.2010 (annex-13). The Election Board or the petitioners did not approach the civil Court and raise the question of maintainability of the suit, but proceeded with the election in violation of the order of *status quo* passed by a Court of law. The Rule in Writ Petition No.9394 of 2010 was issued and all further proceedings towards holding the election was stayed on 9.12.2010 by this Court, but respondent No.3 or its executive committee or any of its office bearers did not bring it into notice of this Court that the election had already been held. The Election Board, which was aware of the order of the Court, was bound to obey the same even the suit was not maintainable in its view [reliance placed on 53 DLR (AD) 70 as cited by learned A.A.G.]

The allegations of not constituting the Election Board and Election Appeal Board within time, illegalities in preparation of final voter list, attempt to hold an unopposed election keeping the

intending contestants outside, approval of false district committees and violation of the Articles of Association of NASCIB against the central executive committee as evident from annexes-1, 3, 8, 10 were domestically inquired into by the Ministry of Commerce on giving opportunity of being heard twice. Annex-11 shows that an appeal was preferred to the Election Appeal Board on 26.10.2010 by the President of Gazipur district committee. There is no statement on the part of the writ petitioners whether this appeal was heard and disposed of. Admittedly the Election Board and Election Appeal Board were formed on 15.9.2010 and the election was declared to be held on 13.12.2010 i.e not before 90 days of formation of the Election Board and Appeal Board and as such the schedule was declared in violation of rule 14 of the Trade Organizations Rules, 1994. It appears from annexes: 6 and 7 that the President of the Election Board Mr. Abul Hossain Khan resigned from the Board on 11.11.2010. The writ petitioners stated in their affidavit-in-reply that after his resignation the Election Board was reconstituted on 13.11.2010 and in support they annexed the resolution of the executive committee (annex-I to the affidavit-in-reply), but nowhere it is stated that the said resolution was ever communicated to the Director of Trade Organizations. However, on completion of the domestic inquiry, the Government in the Ministry of Commerce was satisfied about the illegalities committed by the then central executive committee of NASCIB and thus appointed the Administrator only to do its routine work, hold the election within six months and hand over the charge to the newly elected committee. In

such a case the High Court Division should not interfere into the findings of a domestic inquiry, unless it is found that the impugned order was not the logical outcome of the inquiry.

Admittedly the tenure of previous executive committee expired on 27.12.2010, and the notice to show cause was served on 26.9.2010, another notice for hearing in person was served on 12.10.2010 and the impugned order was passed on 29.11.2010. The Secretary General of NASCIB allegedly communicated the election result to the office of Director of Trade Organizations through a letter which was received at 5 p.m on 29.11.2010 i.e just at the closing point (annex-G). It means the impugned order was passed before communication of the same. Therefore, the question of nullifying the election did not arise. It is also to be considered that authenticity of the said letter (annex-G) has been denied by the respondent in its affidavit-in-opposition and that the Administrator was appointed mainly for holding the next election as there was illegality in publishing the voter list and in the process of election.

Election of a trade organization is not generally amenable to writ jurisdiction, but under the facts and circumstances of the present case validity of the election in question is a collateral issue in Writ Petition No.9390 of 2010. From the discussions made hereinbefore it is clear that the election in question was not held within the knowledge of Director, Trade Organizations and was held in violation of Court's order and without disposing of the appeal preferred. Moreover, there was violation of the Trade Organizations Rules in

declaring the election schedule. So, it cannot be said that the election was held in accordance with law.

In Writ Petition No.9394 of 2010 the Rule was issued only to examine the legality of the voter list. Although the petitioners sought for direction upon the respondents to postpone the election and declare the schedule afresh on preparation of a new voter list but when the Rule was not issued in that manner, they did not challenge the refusal nor did they pray for issuance of any supplementary Rule. They have come to support the Rule issued only to examine the legality of voter list prepared by the Election Board. It also does not appear that the petitioners have referred the matter to the Arbitration Tribunal constituted by Federation of Chamber of Commerce and Industry and thereby exhausted the remedy as provided in section 12 of the Ordinance. NASCIB or its Election Board is neither a person nor any statutory authority or local body within the scope of article 102 of the Constitution and as such the writ petition is not maintainable. This view lends support from 47 DLR, 209 cited by Mr. Mainul Hossain.

In view of the discussions made above we do not find any illegality in the impugned order in Writ Petition No.9390 of 2010 and hold that Writ Petition No.9394 of 2010 is not maintainable. Accordingly, both the Rules are discharged, however, without any order as to cost.

Since in the meantime the state of affairs have proceeded far and it is not clear whether the appointed Administrator Mr. Pronab Kumar Ghosh is still posted to his previous post in Dhaka, the Government is at liberty to replace his name by a supplementary order, if he (Pronab Kumar Ghosh) is transferred/posted elsewhere. The Administrator will manage to prepare and publish a new voter list and will hold the next election of the central executive committee of NASCIB in accordance with law within six months from taking charge.

Mohammad Bazlur Rahman, J:

I agree.